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SELECTIONS FROM PAPERS

RELATING TO

# THE BENGAL TENANCY ACT, 1885

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# SELECTIONS

FROM

# PAPERS RELATING TO THE BENGAL TENANCY ACT, 1885.

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No. 6, dated Fort William, the 21st March, 1882.

*From—The Government of India,*

*To—Her Majesty's Secretary of State for India.*

Introductory.

YOUR Lordship is aware that the question of a revised Rent Law for Bengal has been, for some time past, under consideration. The Report of the Rent Law Commission, appointed by the Lieutenant-Governor of Bengal, was submitted to us in July, 1880, and was transmitted to England not long after its receipt. We explained[1] that we were not in a position to express our views upon it until the opinions invited by the Local Government had been collected; and we intimated that there would be no attempt to legislate on the subject until our recommendations had been laid before, and considered by, Your Lordship.

[1] Despatch No. 1 (Revenue), dated the 8th December, 1880

The report of the Bengal Government.

2. We now have the honour to forward a Report, in two volumes, furnished by the Government of Bengal, which deals with the proposed amendment of the law of landlord and tenant in that province. It will be perceived that, in all, three Bills for the consolidation and revision of the Rent Law throughout Bengal, have been prepared at different times by different authorities. The first draft was that which was included in the above-mentioned Report of the Rent Law Commission; the second draft, after portions had been circulated for the opinion of selected officials, was completed in May, 1881, by Mr. Reynolds, an officer who was placed on special duty for some months to assist the Lieutenant-Governor in his deliberations: the third draft is that which has been finally settled by Sir Ashley Eden. Our remarks will be mainly directed to this third draft; and it is to it that we shall refer wherever, in the course of this despatch, we speak of "the Bill" without further specification.

Scope of this despatch.

3. At the outset we would explain that there are many questions of much consequence, necessarily raised by the present undertaking, which we shall exclude from notice on this occasion, because they must engage the attention of the Legislative Council which has to effect the amendment of the law. The whole project has not yet advanced to that stage in which the Bill might be passed immediately. On its introduction in any Council, very numerous points, both of substance and expression, will be found to require close examination by lawyers and other experts. It is not our object now to forestall the business of the legislature, but to obtain Your Lordship's instructions in regard to the general principles upon which legislation shall proceed. We shall therefore avoid the discussion of all matters connected with the Bill which are not of primary importance for that purpose; but we shall preface the statement of our conclusions and of the chief grounds for them, by a review of the recent history of the subject.

General objections to legislation.

4. This we are led to do partly because the nature of the evils which we desire to correct will best be exposed by reference to actual occurrences; and partly because the necessity for any general revision of the Bengal Rent Law has been questioned in some quarters since the Report of the Rent Law Commission was published about a year and a half ago. The zamindárs, both of Bihár and

* The marginal citations in the text relate to the four Volumes, containing the Bengal Rent Papers, numbered serially in order of date; thus—

No. I is Volume I of the Report of the Rent Law Commission.

No. II is Volume II of the same Report.

(The edition quoted is the second edition, printed at the Office of the Superintendent of Government Printing, Calcutta, 1881).

No. III is Volume II of the Report of the Bengal Government, containing opinions and memorials.

No. IV is Volume I of the same Report, comprising Sir Ashley Eden's Bill and other papers.

Bengal, urge that the movement which has resulted in the proposed Bill, originated when new responsibilities were imposed upon the landholders in connection with the Road and Public Works cesses, and was due to the admission that, on this account, further facilities should be afforded to the landholders in the collection of their rents. The Bihár zamíndárs allege (though the allegation is not undisputed) that they never complained of difficulties in collecting and enhancing their rents. They characterise the assertions that the Bihár peasantry are in a poor and depressed condition, and that this condition is due to some defect in the land system, as groundless assumptions; and they pronounce legislative interference to be absolutely unnecessary. The zamíndárs who attended the Conference of the British Indian Association in February and March, 1881, unanimously deprecated any large change in the substantive Rent Law.

Objections met from the history of the subject.

A. pp 129 ff.

5. The issue thus raised has been very conclusively met by the Lieutenant-Governor, and the particulars recited in the *Memorandum on the History of the Rent Question in Bengal* (annexed to the letter of the Bengal Government No. 849T, dated the 21st July, 1881), suffice to show that for the last nine or ten years a general revision of the substantive portions of the Rent Law has been regarded as, at some time, inevitable, and has been advocated by none more eagerly than by the zamíndárs themselves. Act X of 1859 received the Governor General's assent on the 29th April of that year. Before the end of 1863 its amendment had been suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue authorities of the North-Western Provinces. Of late years successive Lieutenant-Governors have borne witness to the existence of chronic evils which nothing short of comprehensive legislation could cure. In 1873, Sir George Campbell had no doubt that the Government would eventually be compelled to deal with the whole question of the relations of landlords and raiyats in Bengal. In 1876, Sir Richard Temple proposed to introduce a Bill to define the principles upon which the rents of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realising arrears of rent in undisputed cases, to extend the definition of "occupancy-raiyat," and to render the right and interest of a raiyat of that class liable to sale for default in paying rent, and transferable by private agreement. The Government of India intimated its assent to the preparation of such a measure, but invited further discussion as to the transferability of the occupancy right, on which point doubts were entertained. Sir Ashley Eden, in framing a Bill designed to remove the real causes of dispute amongst the agricultural classes, has merely undertaken a duty which his predecessors acknowledged, which Sir Richard Temple attempted, and which must, sooner or later, have been fulfilled.

Proceedings from 1863 to 1870.

B. pp 132-4

6. The discussion of 1863, arose in Bengal out of the decision of the High Court in the celebrated case of *Hills* versus *Ishwar Ghose*—a decision unfavourable to the rights of the cultivators, and treating the question of Indian land-rent on theoretic principles held by revenue officers to be inapplicable to the subject. It is mentioned in the *Historical Memorandum* that it is not possible from the papers in the Bengal Secretariat to trace all the steps in the correspondence which ensued. Our records, however, show that a Bill for the amendment of Act X of 1859 was drawn up by Sir W. Muir and circulated for opinion in August, 1865, to the Governments of Bengal, the North-Western Provinces, and the Panjáb, and to the Chief Commissioners of the Central Provinces and Oudh. Provision was made in respect to the occupancy-right and enhancement. It was intended to extend the new law to the Regulation Districts of Bengal and the North-Western Provinces, and it was supposed that it would probably also prove suitable for the Central Provinces and the Panjáb. Sir Cecil Beadon, the Lieutenant-Governor of Bengal, when replying to the circular of 1865, did not, indeed, deny that Act X of 1859 might, on its introduction, have worked injustice with reference to rights of occupancy, but he nevertheless very strongly deprecated fresh legislation. In 1867 he again represented that any change in the principles of Act X would then produce undesirable results. And finally, when in 1869 it was determined to transfer the trial of rent suits from the Revenue to the ordinary Courts, the Government of Sir William Grey, notwithstanding the solicitations of the landlords, firmly refused to alter the substantive rent law.

The same continued.

7. The opponents of the present measure are entitled to the full benefit of these facts. The first difficulties in Bengal arose out of the working of the law of enhancement; and doubtless much was hoped from the judgment in the great rent case of *Thakuráni Dasi* delivered in 1865, which was meant to provide an equitable rule for governing increase of rent and to restore the raiyat to the beneficial position whence he had been ousted in 1863. About this time, too, circumstances may have suggested to some a belief that the Government, having afforded insufficient protection to the raiyats from the period of the Permanent Settlement, had, in 1859, proceeded to too great a length in their support. For ourselves (looking only to the subject immediately before us) we entirely disavow any belief of this nature. On the contrary, we hold that in the Lower Provinces further steps should now be taken in the direction of securing the tenants' interests. But it is important not to ignore the oscillation of general opinion which occurred fifteen or sixteen years ago. Many events had tended to lower the claims of tenants in official estimation and to help the cause of the large landlords. Before the mutiny ideas on the subject of property and tenant-right in India took very much of their colour from the views of the able peasant-proprietary school of the North-Western Provinces. But the occurrences of 1857 drew attention in some places to the leaderless condition of the people; the sympathies between the mass of the agricultural population and their rulers were for some years disturbed by reminiscences of disorder and severity; the development of the country gave rise to hopes of European

colonisation; and thus theories of land-tenure, which were unfavourable to tenant-rights, as being an impediment to the free disposal of property, were advocated, in Lower Bengal, on behalf of great European interests, and, elsewhere, as coincident with political expediency. The relation between landlord and tenant began to be regarded purely as one of contract. Sir Barnes Peacock objected to section 6 of Act X of 1859 because, in his opinion, it interfered with the just rights of the zamíndárs, at least in the permanently-settled districts, by vesting rights of occupancy in the raiyats which, as he thought, had no previous existence. The Statement of Objects and Reasons, annexed to the Bill of 1865, expressly asserted that, however, suitable the occupancy section of Act X of 1859 might be to Bengal, its provisions were, in the North-Western Provinces, over-stringent and unreasonably adverse to the proprietor.

Minute, dated the 31st March, 1864.

8. From 1870 onwards a distinction is observable in the reports from the three Provinces of Orissa, Bengal Proper, and Bihár, respectively. The difficulties which the legislature has now to encounter have assumed different shapes in different places; in the east there have been combinations of raiyats refusing to pay rent; from the west and south we have indisputable evidence of oppressive conduct on the part of the zamíndárs. Amongst the causes in general operation throughout the Lower Provinces, which enable either party, when it is the stronger one, to nullify the just rights of the other, we would place, first, the failure, in some very material points, of a law intended to protect the cultivators, and to secure the zamíndárs in the enjoyment of fair and equitable rents; and secondly, the circumstance that the legislation of 1859 was not followed by executive proceedings for the formation and proper maintenance of a record of the rights of the several classes interested in the land. Neither Act X of 1859, nor, in our opinion, any other legislation can, merely by its own force, completely prevent aggression. From such causes it has happened that where the zamíndárs are strong, tenures have been broken and rents have been grievously enhanced. Where prosperity and advancing knowledge have enabled the raiyats to resist illegal or unjustifiable proceedings, the zamíndárs have failed to obtain their fair share in the increasing value of produce, and have often found difficulty in collecting the existing rental.

Difficulties of different classes have arisen in different parts.

Main causes of them.

9. The Board of Revenue, in making a report dated the 12th October, 1871, regarding the levy of illegal cesses in Orissa, referred to the raiyats in that Division as being ignorant, listless and impoverished. When submitting the matter to the Government of India in 1873, Sir George Campbell wrote:—"In some parts of Orissa, at any rate, the Government settlement made direct with the hereditary raiyats has been utterly set at naught; the Government leases have been taken from the raiyats; the rents fixed by the Government officers have been increased many fold; and the main object of the extension of the settlement for a fresh term of thirty years after the famine, *viz.*, permitting the raiyats to hold on at the old settlement rates, has been utterly defeated." After referring to testimony from which he inferred that the raiyats of Cuttack were reduced to a state of poverty and subjection, and that the old *thani* or privileged raiyats of Púri had sunk into tenants-at-will, he continued:—"For the rest, these papers show conclusively the utter failure of the system adopted in Orissa of making a minute and careful settlement of the rights of all parties, and then leaving the settlement to itself without the supervision of Government and the machinery of tahsíldárs, kánúngoes and village accountants, by which settlements are worked and carried out in other Provinces. Nowhere was the settlement more carefully made, or made in greater detail than in Orissa—perhaps nowhere were the status and privileges of the raiyats so well protected in theory as in Orissa; yet we find, after the expiry of a thirty years' settlement, during which no annual or periodical papers were filed, and the settlement records were in no way carried on, that this whole system of record and protection has utterly collapsed; the records have become waste paper, and the raiyats supposed to be so well protected are amongst the most oppressed in India." Sir George Campbell urged the compilation of a new record-of-rights. But the Government of India in 1874 did not think it desirable to take measures for the re-settlement of Orissa, and preferred to trust for the time, at any rate, to improved administration to alleviate any evils which might exist. This decision was approved by the Secretary of State, who concurred in the view of the Board of Revenue that the zamíndárs would regard the formation of a fresh record-of-rights as a re-opening of the settlement extended in 1868 for a further period of thirty years, and therefore as involving a breach of engagement. The present Bill does not, of its force, apply to Orissa; but power is taken to extend it to that part of the country. We hope that in 1897, on the expiry of the current term of thirty years, the operations of the new settlement will bring on record and definitely establish the rights of all classes of the tenantry.

The rent question in Orissa.

IV, 138.

Pro., L. R. S., April, 1873, Nos. 40-44.

Despatch No. 9, dated 19th March, 1874.

10. In 1873, following up the information received from Orissa, Sir George Campbell instituted general inquiries as to the levy of illegal cesses throughout Bengal. It appeared that the practice was nearly universal; in fact, so widespread and deeply-rooted was it that the Lieutenant-Governor hesitated to attempt its thorough eradication. He contented himself with proclaiming to the raiyats that no cesses were leviable from them except the Road Cess under the Act of 1871. The zamíndárs were thus, in some degree, thrown back on the ordinary law of enhancement.

Illegal cesses.

139-40

11. Meanwhile, in the eastern districts of Bengal Proper, there were tendencies and circumstances at work which led to events demonstrating the great difficulties in the way of the determination of rents and the settlement of claims to enhanced rents existing under the present law. Prosperity had been stimulated by the development of the jute trade; the Muham-

The rent question in the Eastern Districts.

madan element preponderated in the population; in extensive waste lands reclaiming settlers had obtained leases on favourable terms; and, in general, the raiyats were strong and well-to-do, and were yearly becoming better acquainted with their rights and better able to assert them. In these circumstances even legitimate demands might not be met without a struggle; whilst exaction was likely to provoke the retaliation of outrage or tumult. The Dacca Divisional Report for 1872-73 mentioned violent collisions between combinations of raiyats and their landlords' club-men, and referred to the fire-raisings by which raiyats on strike sought to prevent people from siding with their opponents. The Pabná District in 1873 became the scene of extensive agrarian disturbances.

IV, 137.

Pros., Home. August, 1873, Nos. 24—9.

The Pabná outbreak of 1873.

12. The causes and character of the Pabná outbreak strikingly illustrate the general nature of rent disputes in Bengal. The affair originated in the Isafshahi Pargana, formerly owned by the Rájás of Nattore. In the decay of that ancient family a part of its possessions was purchased by newcomers whose relations with their raiyats and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses, which were afterwards more or less consolidated with the rent. The raiyats never gave any written or formal consent to the conversion of these voluntary *abwábs* or cesses into dues which could be realised according to law. In time the rent rates of Isafshahi came greatly to exceed those of neighbouring tracts. Two causes of the dispute were thus a high rate of collection compared with other parganas, and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamíndárs and of the agents of others. There had been affrays in which men were killed by spear wounds. Swordsmen had been sent to make collections, and cases of attacks by club-men and of kidnapping are mentioned in the reports.

The same continued.

13. Sir George Campbell's inquiries in regard to illegal exactions, and the prospect of the extension of the Road Cess Act to the district, led the zamíndárs to demand written engagements from the raiyats. One Protab Chunder Bannerji required his raiyats to execute agreements in writing, binding them to pay rents at rates higher than those prevailing in any other part of the district, to hold their lands subject to immediate ejection should they ever have the misfortune to quarrel with him, and finally to admit that the quantity of land held was that found by measurement with a pole shorter than the standard pole used in former years. Some of the raiyats signed *kabúliyats* (agreements) on these terms, but the majority refused; whereupon the zamíndárs resorted to the Civil Court, producing measurement papers which, if genuine, showed that the lands had been thrice measured, and that the raiyats had paid the rent demanded for the last ten years. The Munsif granted a decree, but the Civil Judge, on appeal, found that the accounts were false and concocted for the purpose of the suit, and declared the rent receipts filed by the raiyats to be genuine, though the other side had pronounced them to be forgeries. He accordingly gave a decree in favour of the raiyats.

The same continued.

14. Emboldened by the result of this litigation, the rest of the raiyats refused to execute agreements, repudiated certain payments which had been from time to time added to their dues, and combined for mutual support against the zamíndárs. The movement spread to other estates and the league was fully formed by about May 1873. Messengers were despatched to those who held aloof, threatening that armed bands would be sent to plunder them unless they declared themselves raiyats only of the Queen; and the peasantry began to march about the country in large assemblages, one or two thousand strong. The people, as a rule, notified to the Magistrate their adherence to the league; and by the 1st July, 1876 this had been done by the inhabitants of 269 villages. The raiyats demanded the low rates of the Rájá of Nattore's time, the cubit of measurement adopted by one of the early district officers, and the abolition of illegal cesses. They ceased to pay rents and were said to be engaged in making measurements. They announced that on ascertaining what was due by their own calculations, they would deposit the amount in the Civil Court according to law.

The same.

15. Most of these raiyats were Muhammadans, and nearly all the zamíndárs and their superior servants were Hindús. Although some acts of mischief and plunder were committed, in the main the people restricted themselves to tumults and processions. Disorder was repressed by executive measures of the usual kind; but the movement continued to extend, particularly towards Bogra. The general view of Sir George Campbell may be said to have been that, unless the Government was prepared to grapple with the whole of an enormous subject and to take permanent measures to obviate or deal effectively with rent disputes throughout Bengal, it was best to leave the parties to settle their differences as they could, without further interference than was necessary for the maintenance of order. Early in 1874, when the final report on the disturbances was received, the Lieutenant-Governor's hands were full of the affairs of the famine; and the consideration of legislative measures to prevent illegal exactions by the zamíndárs was postponed till some more convenient opportunity.

Orders of the Secretary of State.

16. All these circumstances were reported to the Secretary of State in a series of despatches, which elicited a series of replies. Referring to the levy of illegal cesses in Orissa, Lord Salisbury* acquiesced in the conclusion that the Lieutenant-Governor could not be expected to pursue the question of zamíndári oppressions and exactions at a time when he was fully occupied with other matters of grave moment. It was intended that when the pressure of famine business had diminished, attention should again be directed to the subject. In the matter of the Pabná

* Despatch No. 34 (Revenue), dated the 18th June, 1874

disturbances,* His Lordship similarly accepted the view that the time for attempting an effectual remedy had not arrived.

* Despatch No. 12, (Judicial), dated the 16th April, 1874.

Attempts to deal with the rent question since 1874.

17. During the interval between 1874 and the present time, repeated attempts have, year by year, been made to solve the difficulties of which the Pubna disturbances were a symptom and an illustration. In March 1875, Sir R. Temple reported that indications of renewed agrarian trouble were perceptible in Eastern and South-Eastern Bengal. In some parts of the country there still seemed to be a disposition amongst the raiyats to combine in leagues or unions. The disputes turned on the question of enhancement, the zamíndárs demanding higher rents in consequence of the rise in the price of produce, and the occupancy raiyats claiming to pay no more than the old customary rates of the locality. As a precaution to facilitate the maintenance of tranquillity, Sir R. Temple recommended that the Local Government should be empowered to appoint the Collector or other officer to settle authoritatively disputes of this kind. Accordingly, the Agrarian Disputes Act was passed in the following year. The Act, though providing rules for the determination of rent rates, was merely a measure of procedure intended to meet emergencies like those of 1873, and did not introduce any general change in the law of enhancement. It was only to be brought into operation if it appeared that a serious dispute existed in any tract of country in respect of the adjustment of rents or as to arrears of rent; and it was not to be retained in the statute book for more than three years. As a matter of fact, it has expired without being enforced on any occasion. In March 1876, during the course of the debates on the Act, the Hon'ble Kristo Dás Pál, a representative of the zamíndárs, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a dead lock. The raiyat did not know what he was liable to pay, and the zamíndár did not know what he was entitled to receive as rent, in consequence of the admitted rise in the value of produce. Sir R. Temple, referring to the substantive law relating to rent, concurred in the opinion that some principle for determining rates of rent should be fixed by legislation. He alluded to the great difficulties of the subject, and promised that the best efforts of his Government should be directed to its consideration. Before this, in June 1875, the British Indian Association had represented that the struggle between zamíndárs and raiyats, due to the indefiniteness of their relations and readiness of the raiyats to combine in withholding rent, could only be ended by a general revision of the rent law.

IV, 154.

IV, 159.

The Agrarian Disputes Act.

Sir Richard Temple's Bill of 1876.

18. In August, 1876, Sir R. Temple submitted the proposals for a Bill, which have been already mentioned in the 5th paragraph of this despatch. He pointed out that the Agrarian Dispute's Act could do little more than substitute one agency for another, and that it was necessary to lay down principles which should guide the determination in all rent disputes by whomsover decided. His main recommendation was that the rate payable by occupancy-raiyats should be fixed, as in the Panjáb and Oudh, at something less, by a certain percentage, than the rate paid by unprivileged raiyats, where this could be ascertained. Where the unprivileged rates could not be discovered, he wished the occupancy rate to be calculated at a certain proportion of the value of the gross produce. A Bill was prepared in this sense, but the opinions upon it showed that the village rent rates for ordinary occupancy and non-occupancy raiyats were the same in most districts, so that it would not be practicable to adjust the one by reference to the other. There was delay in ascertaining the views of the Secretary of State owing to Lord Salisbury's absence at Constantinople. It thus happened that in January, 1877, Sir R. Temple, shortly before he made over charge of the Lieutenant-Governorship of Bengal to his successor, proposed that the amendment of the substantive rent law should be deferred, and that only so much of the Bill of 1876 as provided for the better realisation of undisputed arrears of rent should be immediately proceeded with. Sir Ashley Eden adopted this suggestion, and, in requesting sanction to introduce a Bill for the above purpose into the Bengal Legislative Council, observed that, under the present procedure, the recovery of rent by legal process, even when the arrear is not disputed, is so tedious and costly as practically in many cases to involve a denial of justice, and that if the zamíndárs were to be required, as they now are, to pay the Road and Public Works cesses, recovering half the amounts from the subordinate holders, the Government was bound in equity to aid them in obtaining their dues from the raiyats.

Sir Ashley Eden's Bill of 1878.

19. We agreed to the course proposed by Sir Ashley Eden, and in February, 1878, we received from his Government a Bill to provide for the more speedy realisation of arrears of rent, which was partly modelled on the summary procedure of Act V of 1866 for dealing with bills of exchange. The Lieutenant-Governor was advised that the Bill ought to be introduced in the Legislative Council of the Governor General, and not in the local Legislature; and for this opinion there were good technical reasons, depending on the language of the Code of Civil Procedure. It was, however, held by our Government that it would be better to amend the Code than to remove the Bill into the Council of the Governor General. Act XVIII of 1878 was therefore passed, and the Bengal Legislature was left to proceed with the Bill.

The Select Committee in 1879 proposes the revision of the whole law.

20. But it was found impracticable to confine the scope of the Bill to the limited object indicated by its original title. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognised in Bengal, even before the Civil Procedure Code was amended, that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent, and sub-letting. It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the existing

law, not ostensibly affected by it; and in February, 1879, a majority of the Select Committee on the Bill recommended that the whole subject of a revision of the rent law should be once for all fairly faced. This proposal was supported by Sir Ashley Eden; and in April, 1879, we sanctioned the formation of a Commission to prepare a digest of the existing statute and case law and to frame the draft of a consolidating enactment.

The rent question in Bihár. Indigo.

21. Meanwhile, circumstances not yet mentioned had led to a project for special legislation in regard to Bihár. Your Lordship will recollect the troubles connected with the cultivation of indigo, which arose in the Rajsháhí, Máldah, Murshidádád, Nuddea, Jessore, and Faríd pur Districts about 22 years ago. The report of the Indigo Commission of 1860 exhibited the means adopted to induce the raiyats to cultivate what was to them an unprofitable crop, and showed that under-tenures were taken at excessive rents, cattle seized, men illegally imprisoned, and other modes of oppression used to compel the production of indigo for which the planters paid the raiyats an inadequate price. At last the raiyats refused to continue the cultivation, and the industry broke down in that part of the country.

Indigo in Tirhút and Champaran, 1866-68.

22. Very similar evils began to attract attention in Tirhút and Champaran about the year 1866-67. In the latter district, indeed, there was something like an outbreak, and one bungalow was fired. In both districts the principal form of resistance was a refusal on the part of the raiyats to sow indigo. The Commissioner, Mr. Jenkins, in reporting on the matter, enumerated, amongst the causes of dissatisfaction, the harassment of the raiyats by the underlings of the factories, who had for years "carried on all kinds of oppression and extortion," and the fact that indigo cultivation did not in itself pay the raiyat for his labour. He believed that every raiyat cultivated indigo under pressure, such pressure consisting in a threat to enhance the rents of his lands all round unless he would grow indigo, and to eject him if he defaulted in payment of the enhanced demand. The planters, looking to indigo for their profits, paid high rents to the large landholders under whom they held; and the landholders, in order to keep up their rents, lent the whole weight of their influence to the cause of the planters. One instance is cited in which a planter bound himself to pay Rs. 52,000 a year to the zamíndár, whilst his collections from the cultivators only amounted to Rs. 40,000; so that there was a loss of Rs. 12,000 annually to be made up by profits in indigo. The Champaran planters raised their rates of payment for the plant, and the Lieutenant-Governor deprecated Government interference, thinking that it would be regarded as an authoritative condemnation of the Indigo industry, and would lead to serious mischief. But the Governor General in Council considered it necessary to administer a very serious warning to the planters. The Government, it was said, could not, without abandoning its duties to the people, tolerate such a system as that described in the correspondence; and would, if the planters were themselves unable to reform it, be compelled to interfere. The Governor General (Lord Lawrence) recorded a separate minute, in which he expressed the conviction that a law was required which would protect the cultivators both from the planters and from the zamíndárs. "I believe," he said, "that it will be necessary for the Government sooner or later to interfere, and to pass a law which shall throughly protect the raiyat and make him what he now is only in name, a freeman, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it."

Indigo in Tirhút, 1873.

23. Here the matter ended for a time; but in August, 1873, the Lieutenant-Governor (Sir George Campbell) forwarded some papers regarding the feelings of Natives towards Europeans in Tirhút. He remarked on the practices of forcing the raiyats to grow indigo and of compelling them to exchange their lands, so that the best plots were picked out by the planters; and he took occasion to say that "the want of a definition and record-of-rights in land, and the unsatisfactory character of the Civil Courts, by which alone those rights can be determined, are great evils; and that, on the other hand, the Bihár indigo system is not altogether a healthy one based on free trade, but that it has about it elements of *quasi*-feudal compulsion." As at that time, however Champaran and Tirhút were threatened with scarcity, the occasion was considered inopportune for making further enquiries; and the matter was merely commended to the watchful attention of the Government of Bengal.

Causes of poverty in Bihár. Mr. Metcalfe's opinion.

24. In the autumn of 1875 apprehensions were entertained that scarcity might again occur in Northern Bihár, and two officers, Messrs. Geddes and MacDonnell, were deputed to report upon the condition and prospects of the country. Some very grave statements which had been made by Mr. Metcalfe, Officiating Commissioner of the Patna Division, in December of that year, were specially commended to their attention. Mr. Metcalfe had said, "in the present year there are excellent crops in some places and none at all in others. Within seventeen years there have been five similar years, in each of which a certain part of the population has died of starvation." After enumerating what were, in his opinion, the causes of this state of things, he continued: "Not only, therefore, is the cultivator left with an area barely sufficient to raise the food he requires for his family, but in times of drought, having no margin of cultivation left, he is short of food, as the yield is below his requirements."

25. Messrs. Geddes and MacDonnell reported in January, 1876. "How comes it," they asked,

"That, with the present, not very grave, vicissitude of season, the Imperial Government should be expected to interpose in regard to a most fertile region, the great bulk of whose agricultural profits go elsewhere than to the Imperial Exchequer? How comes it that Bihár, with an industrious population, the most fertile soil in India, a territory comparatively very lightly assessed in land tax—how comes it that this Bihar should be seeking

rial relief oftener and more extensively than the regions less fertile, and far less (*sic*) heavily assessed by ernment?" "The explanation," they went on to say, "as to why the three northern sub-divisions should not over the vicissitude by falling back on food reserves, or on money resource, summarises itself briefly thus. e whole conditions of agricultural industry there are such as to render it precarious. There is no sufficient tainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, ether of grain, of property, of money, or of credit. For the whole conditions of life, as will be seen from the ollector's reports, are such as to preclude any sufficient accumulation of the kind. The raiyats cannot fall back n any credit fund like the tenant-right of other parts of Bengal, for practically there is no such right available offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as the fruits of their industry."

Opinion of Messrs. Geddes and MacDonnell.

Reference was made to the unsatisfactory character of rent suits in Bihár, and to the *thikadári* or assignment system, consisting in the sale and purchase of the control which the zamíndár is able to exercise over the raiyat, including therein almost unlimited powers of distraint, enhancement and ejectment. The report also alluded to the element of compulsion in, and other abuses connected with, the cultivation of indigo. One experienced officer, it was said, had estimated that indigo occupied 200,000 acres of the very best soil in the Patna Division. There was some ground to suppose that in Muzaffarpur and the northern sub-division of the Bhágulpur District, one-third of the culturable area was under *thika* assignment to Europeans. The practice of illegal distraint, or of sending out a *peon* (messenger) to prevent the reaping of the crop as a means of pressure in order to enforce compliance, whether with legitimate demands or exactions, was very fully described; and the points where violations of the law habitually occurred were specified with precision. Messrs. Geddes and MacDonnell, however, did not recommend special legislation, though it had been suggested by some of the local officers.

Orders on the above.

26. Sir Richard Temple, in reviewing this report, remarked that the condition of the peasantry was undoubtedly low in Bihár,—lower than that of any other peasantry with equal natural advantages which he had seen in India. The Agrarian Disputes Act had not yet been passed; and, pending its enactment, he suspended his judgment as to whether any interposition in respect to tenant-right in Bihár was necessary or desirable. He considered that a remedy should be applied to the abuse of the power of distraining the raiyats' crops. The Government of India promised the Lieutenant-Governor its support in any measures he might propose for ameliorating the condition of the people of North Bihár; and the observations of the Secretary of State* upon his correspondence were as follows:—

"Your Lordship in Council is fully aware that the situation in North Bihár is one of grave anxiety. The well-being of the population is described in the able report of Mr. Geddes as resting on foundation of a very precarious character, and it will demand the utmost vigilance and discrimination of the Government of Bengal to deal with the complication with which the whole question is embarrassed. Your Excellency in Council has wisely determined not to have recourse to immediate and necessarily incomplete remedies, but to leave the subject to the attentive consideration of the Government of Bengal, which will gradually introduce such ameliorations as full experience and intended inquiry may dictate. I fully approve of the resolution of Your Lordship in Council, and shall await with interest the result of the measures which the Lieutenant-Governor, under the sanction of your Government, shall deem it his duty to adopt."

* Despatch No. 32, dated the 19th October, 1876.

Indigo in 1876.

27. In October 1876, the indigo question was again taken up on the appearance of an article in a native newspaper directed against the planters. Sir Richard Temple reported that there had been no cases typical of general discontent or signs of spreading trouble; still the best informed opinion seemed to be that if this great industry was to be maintained, the planters would have to go further than before in making concessions to the raiyats. It was, he thought, manifestly desirable to leave the matter as much as possible to be settled between the parties, the Government merely affording protection against duress or coercion. To this conclusion the Government of India gave a general assent.

The same in 1877.

28. On the 29th August, 1877, Sir Ashley Eden, having succeeded to the Bengal Government, reported his experiences and the steps which he had taken to place the relations between planters and raiyats on a better footing. He did not altogether endorse the view of Sir Richard Temple above cited. A letter of Sir S. C. Bayley (then Commissioner of Patna), dated the 3rd March, 1877, was forwarded, which showed that in five months no less than 142 cases connected with indigo disputes, most of them, indeed, trivial, but some of a very serious kind, had come before the criminal Courts. The general conclusion of the Lieutenant-Governor was that the system, as it existed, involved an amount of lawlessness and oppression, principally in the shape of illegal seizure and retention of land, and to a minor degree, in the shape of extorted agreements to cultivate and of seizure of ploughs and cattle, which he was not prepared to tolerate. A mass of detailed proceedings was laid before the Government of India, and two cases were referred to as illustrating the absolutely arbitrary and illegal way in which planters considered themselves entitled to dispossess raiyats of their land. "One of these cases led to an attempt on the part of the raiyat to commit suicide; in the other, to his actually committing it. In neither case did the raiyat see any hope of redress or think of applying to the Courts; and though both cases were judicially investigated, yet in neither was any punishment inflicted on the factory people."

A report awaited by the Secretary of State since 1878.

29. Sir Ashley Eden further stated that he had been able to induce the planters to initiate some very considerable reforms, increasing, for instance, their rates of payment for indigo, and preventing various harassing practices; amongst others, one "common, not only to planters, but to zamíndárs generally, of issuing requisitions on their raiyats for such things as straw and other local products, either

gratis or at wholly inadequate prices, when required for their own consumption." He l under consideration a scheme for amending the rent law, so as to provide in Bihár some w of securing the raiyat's rights of occupancy and consequent freedom of action; and he notic that the reforms did not extend to the main point, to which he took exception as laying at t root of the evil, *viz.*, the *thikadári* system. A fuller account of the proposed legislation w invited; and Lord Salisbury, in a despatch No. 14, dated 21st February, 1878, to which this Government has as yet made no reply, said that he would await the result of the deliberations of the Government of India on the measure for the amendment of the rent law with the view of giving the raiyats greater security of tenure. The Government of Bengal has from time to time been reminded that a report on this matter was expected. It was stated in 1878 that the question was under local inquiry, and that the Lieutenant-Governor proposed to appoint a Committee of experienced Bihár officials to advise upon it. In 1879 the Report of this Committee was referred to the Rent Commission.

Constitution of the Bihár Rent Committee.

30. The papers connected with the local inquiry preceding the appointment of the Bihár Committee are now before us, and are included amongst the enclosures of this despatch. It will be remembered that in April, 1877 Sir A. Eden had accepted Sir R. Temple's proposal to proceed only with so muc of the then pending Bengal Rent Bill as related to a summary procedure for the recovery arrears of rent. In the previous March Sir S. C. Bayley had furnished his report on the indig cases. The report of Messrs. Geddes and MacDonnell bears date, as already mentioned, January, 1876. On the 7th August, 1877, shortly before addressing us on the indigo questio Sir A. Eden had explained demi-officially to the Commissioner of the Patna Division conside ations which indicated the necessity of a special Rent Law for Bihár, and had asked his advice and opinion on the subject. The language then employed was repeated a year later in the official orders* constituting the Bihár Committee, and has been quoted by the Famine Commission.† There was a general concurrence of opinion *that the law should, by a simple and effective procedure, enable a raiyat to hold his land subject to fixed conditions of tenure, to maintain his rights of occupancy when acquired, to be certified exactly of the amount which he would have to pay for it annually, to resist illegal distraint, illegal cesses, and illegal enhancement, and to have at hand a trustworthy record of demands and payments.* The correspondence further discloses abuses connected with produce rents and appraisement which have also been alluded to by the Famine Commissioners.‡

* Bengal Government No. 2122, dated 7th September, 1878.
† Report, Part II, pp. 117-18, paragraphs 21-22.
‡ Report, Part II, page 121, paragraph 37.

Amalgamation of reports and Bills for Bengal and Bihár.

31. Your Lordship will perceive that, for a period of four years, the Secretary of State has been awaiting proposals for the amendment of the Rent Law in Bihár. It will be noticed that the idea of some special rent legislation for Bihár was entertained by Lord Lawrence fourteen years ago; that when the reports of 1875 and 1876 disclosed the unhappy condition of the people, it was acknowledged that some remedies must be applied; and that from August, 1877 up to the present time the efforts to bring into shape some measure which shall meet the circumstances of the province have been unintermittent. In the proceedings of the Bihár Committee two Bills were prepared: one was drawn up by Mr. Worsley, the Collector of Muzuffarpur, who adopted the arrangement of the North-Western Provinces Act; the other, framed by Mr Finucane, C.S., the Secretary of the Committee, was founded on Act VIII (B. C.) of 1869 with alterations and additions. The Bihár Committee, when submitting its Report on the 8th March, 1878, proposed amendments affecting so many provisions of the present law that they did not deem it sufficient to draft a supplementary Bill. They considered that the whole Rent Law should be re-cast; and, holding this duty to be beyond their powers, recommend that the draft should be undertaken by an officer of the Legislative Department. Thus tw Committees, dealing with distinct Bills, had simultaneously arrived at the conclusion that the time had come for general legislation. The Select Committee on the Bill to provide for the more speedy realisation of arrears of rent, reported in this sense from Calcutta about a fort night before the Bihár Committee completed its labours at Patna; and our decision, sanctioning the appointment of the Bengal Rent Commission, bears date more than a month after the Report of the Bihár Committee was signed, but before it had reached our Government. As we have stated above, the Lieutenant-Governor referred the Report of the Bihár Committee to the Rent Law Commissioners, who incorporated it in their proceedings, and included special provisions applicable to Bihár in their general draft Bill. It is due to these circumstances that we have been unable, until now, to proceed with the rent question as it affects Bihár in particular.

Causes of depressed condition of Bihár.

32. The evidence before us of the depressed and precarious position of the tenantry in that part of India is full and conclusive. It would be altogether a mistake to suppose that the unfortunate state of things which there exists is mainly, or even very largely, due to indigo planting. The facts connected with the cultivation of indigo, which were brought to notice some years ago, testify, indeed, to the possibility of serious oppression, and strikingly exhibit the manner in which persons exercising the authority of landlords could trample upon the rights of defenceless peasants. But these facts, taken by themselves, merely illustrate abuses of proprietary power which are rife throughout Bihár. The area under indigo cultivation is an insignificant fraction out of the 23,670 square miles which constitute the Patna Division. It is manifest that the majority of the raiyats in the whole of that large tract of country are rack-rented. The raiyats of the Shahábád District appear to be better off than others; but for a general view we would refer Your Lordship to the Note drawn up by Mr. Reynolds on the 11th December, 1880, after a visit to Bankipur, during which he had conferred with

IV, 375 ff.

experienced officers. It was urged upon him that the great evil which calls for remedy in Behár, is the arbitrary enhancement of rent at the will of the landlord. The Collector of Patna reports that the mass of the tenantry are now paying rents which have doubled within the last 16 years. The Covenanted Deputy Collector of Gayá calculates that the rental of the different districts is at present from twice to four times the amount paid at the time of the Permanent Settlement. Mr. Reynolds shows from the Road Cess returns that the incidence of rent is higher in the Patna District than in any other district of Bengal; higher in Darbhangá and Sáran than in any other districts except Hughlí and Burdwan; and higher in Gayá, Shahábád and Muzaffarpur than in any other districts except the above and five more, of which two, Rajsháhi and the 24-Parganas, pay the same average rental as Gayá, and one, Rangpur, pays the same average rental as Shahábád. The only district of the Patna Division, where the average rental does not appear to be unusually high, is Champaran, of which the circumstances are exceptional, as the proportion of waste-land is very large.

Metcalfe, III 705.

Finucane, III, 935.

State of the case as described by certain zamíndárs and planters.

33. Without entering upon any detail in support of our opinion that the Bihár ryot is poor and oppressed, we will cite briefly a few descriptions of prevailing circumstances or practices given by zamíndárs or planters themselves. Major Hidayat Ali, an important landholder in Bihár, writes on 20th September, 1877: "The raiyats of this province, *viz.*, the heads of families, and even the women and the male adult children of the agricultural classes, though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them." His opinion is characterised by Colonel Emerson, the Cantonment Magistrate of Dinapur, as unprejudiced and valuable. Mr. Worsley, Collector of Muzuffarpur, reports on 9th October, 1877:

Bihár Rent Papers, page 8.

"That illegal distraint was universally practised in this district I well knew; but I had not expected to receive the following naive confession from all the principal zamíndárs of Hajipur Sub-division: 'The zamíndárs confess that they resort to private distraint in preference to distraint through the Court, the latter involving expense which has to come on the raiyat, and diminishing his means of paying his legitimate dues, as well as of leaving a sufficient balance for his own support.'"

Ibid, page 26.

Mr. Minden Wilson, one of the oldest planters in the Muzaffarpur District, in the course of a deposition before a Civil Court taken in May, 1876, stated as follows:

Revenue, Agriculture and Commerce Proceedings, December, 1877, Nos. 1—4, pages 97-98.

"I can define what is called factory influence. The factory influence is generally represented by a *peon* with a stick. I think that gives the idea of the influence. I do not think the factory influence extends beyond that. It is all due to coercion. The factory has no legal influence independently of contracts or agreements. I did depose previously that planters had not moral influence in their *dehát* (circles of villages). I swear again, as it is my opinion, that a manager has no moral influence in his *dehát*. The planters are supposed to place themselves in the place of zamíndárs from whom they take leases. They do partly—some *thíkadárs* more and some less; it depends on the capacity of the managers. The amount of influence depends on the capacity of the manager. It is customary that zamíndárs have a great influence over the raiyats. Leases are taken from them for the purpose of exercising that zamíndári influence over them to raise indigo. The raiyats know that the influence may be exercised against them at any time, either for the purpose of raising indigo or for any other purpose. The rent is allowed to recur into arrears, and money permitted to be owed to the factory for the purpose of increasing that influence. It is the rule that orders from the manager are obeyed by raiyats without exercising any influence. The factory influence is mostly due to coercion, and not all due to coercion as I stated in my examination-in-chief."

Mr. Riddell, a proprietor and manager of the Singhai factory, deposed:

"By moral influence I mean factory influence. I mean that we have a right to have a cart by offering him five annas a day when the man has an offer of twelve annas a day from an outsider, five annas being the usual rate paid in the mafassal. * * * To obtain influence over the raiyats we take leases of villages from zamíndárs. If the raiyats on being asked would agree to cultivate indigo, there would be no necessity for taking leases of villages. We lend money, which is technically called *zar-i-peshgi*, when we take leases of villages, that is to induce them to grant leases. We usually pay to our lessors a larger jama than what we collect from the raiyats as rent. The object for paying a higher jama is to obtain influence over the raiyats in order to induce them to cultivate indigo. * * * * By zamíndári influence I mean that a zamíndár takes carts and employs labourers for his own use without paying for them, or paying too little for them; he makes his raiyats attend his weddings; he collects the rent from them; he takes *salámis* on various occasions. These are matters of custom. This is a custom which I, as a factory manager or zamíndár's lessee, did not adopt."

Statements made by the Government Pleader of Gayá in or about October, 1877 (himself a landholder of the district, and said to be a just man) are to the effect that the zamíndárs exact from the raiyat of Bihár numerous and heavy illegal cesses; that the rents of holdings exempt by law from liability to enhancement are raised every year; that raiyats are illegally ejected; and that the payment of rent is enforced by duress, the raiyat being detained at the zamíndár's place of business, or subjected to annoyance by the zamíndár's dependants sitting at his door, preventing ingress and egress and access to the village wells, until the demand is satisfied.

Bihár Rent Papers, page 21.

State of things at the present time.

34. These admissions were made four or five years ago. The recent harvests have been good. The planters have formed an Association to repress abuses. A great part of the evils we describe is unquestionably due to defects in administration rather than to defects in the law. Many capable officers have, of late years, been posted to Bihár Districts. Sir Ashley Eden has devoted much attention to introducing administrative improvements in Bihár. In one or two districts endeavours have been made to familiarise the raiyats with the true extent of the zamíndárs' legal demands upon them, by advising them to take copies of the Road Cess returns showing the amounts of rent beyond which the zamíndár can effect no legal recovery. Nevertheless, bearing in mind the mass of particulars before us, we concur in the view of the Famine Commission that the condition of the Rent Law in Bihár is a very grave hindrance to agricultural prosperity; and we observe with concern that Mr. Reynolds, in his Note above referred to, and dated only about a year back, sums up his conclusions in these terms:

"The Bihár raiyat of to-day is equally deficient in the knowledge of his rights, and in the spirit which would lead him to assert them. He is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living he has no thought of improving his condition, because, hitherto, the circumstances of his lot have made permanent improvement impossible to him. His best hope has been that the zamíndár and the *mahájan* will leave him a bare sufficiency to support life till his next harvest time comes round."

Reasons for interposition in the Eastern Districts.

35. The remark made in the 5th paragraph of this despatch, that, for the last nine or ten years, it has been practically certain that the whole Bengal Rent Law must at some time be revised, requires some amplification. We have guarded ourselves against the unsound inference that any evils connected with the enforced cultivation of indigo are the only, or even the chief, wrongs which need remedy in Bihár, a province where, we regret to believe, extortionate imposts, wrung from the raiyats, too often by unlawful means, are general. In regard to Eastern Bengal, it would involve misapprehension to imagine either that serious rent disputes, culminating in turbulence, were a novelty in 1873, or that even at the present time when that part of the country is quiet and prosperous, there is no risk of further agitation or commotion. From time immemorial, the levy of rent has been a matter of contest in different parts of Bengal; nor should it be forgotten that the people in proportion as they gain strength and learn that they possess it, are the more ready to take and press advantage. The comparative weakness of the zamíndárs in the Eastern Districts is not a reason for refraining from interposition in that portion of the Lower Provinces. If they feel that their traditional power is shaken, they are the less likely to be scrupulous in its tenacious defence. If the raiyats perceive that they can sometimes resist even legitimate claims with impunity, there is no probability that they will exercise any generous self-control. Only last summer a fresh application was submitted by the Commissioner of the Rajsháhi Division for special police in the Pabná District, the Magistrate having reported that the conditions of the dispute were unchanged, and that if the force were withdrawn, disturbance would again break out. IV. 166.

Protective purpose of the legislature as yet unfulfilled.

36. We have confined our narrative to events which have happened since the passing of Act X of 1859, because it is from the consideration of these that the necessity for fresh legislation must be established. But, as Your Lordship is well aware, the real fact is, that we have now before us a duty which the Indian Government openly undertook at the time of the Permanent Settlement, but which, from that day to this, has never been adequately discharged. We have mentioned reasons for the opinion that some of the objects of Act X of 1859 have not been accomplished, and we shall state further grounds for that belief below. The legislation of that year was, we fully admit, the first earnest endeavour to extend to the raiyats the protection which the Government had promised them now nearly a hundred years ago. Lord Canning, in giving his assent to the Act on the 29th April 1859, wrote:

"Lastly, I have to observe that no one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with in this Bill should be settled; that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavour to improve the position of the raiyats of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zamíndárs, such as ought long since to have been provided. This being so, I think that the Bill ought to pass into law."

That Act X of 1859 did most beneficially restrict the authority of the zamíndárs, there can be no doubt. It revoked the power previously possessed by them of compelling their raiyats to attend their cutcherries or places of business,—a power which was abused to levy enhanced rent, and to force enhancement and all sorts of illegal cesses upon the villagers; and it rescinded previous provisions under which a zamíndár could sue any person on an allegation that he was his raiyat and have him arrested, even though he did not attempt to prove his case against him. But, bearing all this in mind, we still hold that the further intention of the Act in regard to declaring and securing the substantive rights of zamíndárs and raiyats has not yet been attained.

Recapitulation.

37. If, immediately on the passing of the Act, measures had been adopted to record the rights of the cultivators and to map their fields, its operation might have been much more successful. As it is, the Act unstrengthened by local enforcement in detail, or by executive processes for ascertaining rent rates has not prevented chronic class hostility, where the raiyats are strong, nor, where they are weak, chronic oppression. In some places legal enhancements have become all but impracticable and legal dues are unreasonably withheld; while in many parts of the country the rights which the legislature meant to confirm and maintain are precariously held on sufferance and stand in need of further definition and support. In these circumstances our feeling is not one of doubt as to the necessity for legislation, but of regret that legislation has been so long delayed. At first, it was clearly right that the sufficiency of Act X of 1859 should be fully tested; and more recently, the pressure of the famine of 1874, the demands of other important affairs upon the attention of the Government, and the great complexity of the subject have retarded its complete consideration.

Main proposals of Sir Ashley Eden.

38. At the present time, however, the rent law in Bengal, whether enacted by the Legislature or declared by the Courts, as well as the constitutional claims of raiyats and zamíndárs respectively, having been thoroughly examined, we are in a position to state our conclusions upon the proposals of the Lieutenant-Governor. Of these the two most important are—

*First*, that the great body of the cultivators shall be restored to the position which they held under the ancient land law and custom of the country; and

*Secondly*, that the beneficial interest of the settled raiyats, who form the mass of the cul-ating classes of Bengal, shall be determined by authoritatively establishing renewed or evised rates on a system analogous to that of the old *pargana* rates.

Grounds on which they are supported by this Government.

39. We concur in the spirit of both of these proposals. The first proposal, in the shape in which it appears in the Lieutenant-Governor's Bill, would not, in our opinion, give sufficient effect to the policy which both we and the Lieutenant-Governor are desirous of following. We consider that the reservations made at the time of the Permanent Settlement amply justify our interposition for the purposes both of declaring and securing the rights of the tenantry and of regulating the rates of rent; and we think, with Sir Ashley Eden, that it is expedient for the cultivation of the soil to be kept in the hands of a substantial peasantry, able to bear up against vicissitudes of season and the pressure of bad times; and with the Famine Commission, that a system of holdings guaranteed by conditions of permanency and protected from arbitrary enhancement of rent, will tend materially to promote the accumulation of property, the sound growth of credit, and the progress of agricultural improvement.

Rights under the Permanent Settlement.

40. The questions, what were the relative rights of the zamíndárs and the raiyats before the statute law began to interfere, and in what degree those rights were modified by the Regulations and other enactments, have been very exhaustively discussed during the course r the present proceedings by the members of the Rent Commission, by the Lieutenant-Gov-ernor and various other authorities, and by the zamíndárs. We shall content ourselves here with citing evidence showing what the authors of the Permanent Settlement intended to pro-vide; what, as a matter of fact, was provided in the Regulations of the Permanent Settlement; nd in what sense those Regulations were understood by the Government and by some of its best informed officials, before the documents which explain the proceedings of 1793, faded, to a reat extent, out of general recollection.

Lord Cornwallis.

41. In his well-known Minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zámíndárs had ver been denied or disputed. He further said—

"I do not hesitate to give it as my opinion that the zamíndárs, neither now nor ever, could possess a right mpose taxes or *abwábs* upon the raiyats; and if from the confusion which prevailed towards the close of the gul Government, or neglect, or want of information, since we have had possession of the country, new *abwábs* e been imposed by the zamíndárs or farmers, that Government has an undoubted right to abolish such as are ressive and have never been confirmed by a competent authority, and to establish such regulations as may vent the practice of like abuses in future. Neither is the privilege, which the raiyats in many parts of gal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue ssed upon them, by any means incompatible with the proprietary rights of the zamíndárs. Whoever culti-s the land, the zamíndár can receive no more than the established rent, which, in most places, is fully equal hat the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of ng the land to another, would be vesting him with a power to commit a wanton act of oppression from which ould derive no benefit. The practice that prevailed under the Mogul Government of uniting many districts nto one zamíndári, and thereby subjecting many people to the control of one principal zamíndár, rendered some restriction of this nature absolutely necessary. The zamíndár, however, may sell the land, and the cultivators must pay the rent to the purchaser."

The Court of Directors.

42. The Court of Directors, in sanctioning the proposals of Lord Cornwallis, wrote:—

Revenue General Letter, dated 19th September, 1792. Harington, II, pp. 188-9.

"But as so great a change in habits and situation can only be gradual, the interference of Government may for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled; and while we disclaim any interference with respect to the situation of the raiyats or the sums paid by them, with any view of an addition of revenue to ourselves; we expressly reserve the right, which belongs to us as sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders; and instead of diminishing, will ultimately enhance, the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government; under which it appeared to be a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár; for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the sovereign."

The same.

43. Immediately before the Permanent Settlement, the Court of Directors also communicated to the Government of India the following instructions:—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the raiyats and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns, of being the guardians and protectors of every class of persons living under our Government."

Harington, II, pp. 191, 2.

Declaration in 1793.

44. These extracts abundantly prove that the Government of 1790 and 1792 meant to reserve to itself its proper authority to protect the raiyats from oppression; and that the particular forms of oppression which it had in view were arbitrary eviction and arbitrary increase of rent, though attention was mainly directed to the mode of enhancement usual at the time, which consisted in the addi-

tion of *abwábs* or cesses to the revenue then about to be changed by the Permanent Settlem into the so-called rental of the zamíndárs. The proclamation made in obedience to the or of the Court of Directors is contained in Article VII forming section 8 of Regulation I 1793, by which the Permanent Settlement was effected. The Article is thus expressed:

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "th Governor General in Council thinks it necessary to make the following declarations to the zamíndárs, independent taluqdárs, and other actual proprietors of land. First, it being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats, and other cultivators of the soil; and no zamíndár, independent taluqdár, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

Subsequent declarations and evidence.

45. The above citations seem to establish, beyond doubt, that the raiyats, prior to the Permanent Settlement, were entitled to the quiet possession of their lands. This right of occupancy was not rescinded by the Permanent Settlement, and its continuance has frequently been asserted by the Government and by others most capable of forming an opinion on the point. It may freely be admitted that Regulations VII of 1799 and V of 1812 introduced provisions which operated to the detriment of the cultivators. But in 1815 the Bengal Government wrote:—"W consider it as a principle equally applicable to all the Provinces immediately dependant on t Presidency, and we believe we might safely add to the whole of India, that the resident raiya have an established, permanent hereditary right in the soil which they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality." In 1819 the Court of Directors, after quoting a recommendation of Mr. Colebrooke that, "late as it now i measures should be taken for the re-establishment of fixed rates, as nearly conformable to t anciently-established ones as may yet be practicable, to regulate distinctly and definitely th relative rights of the landlord and tenantry," unreservedly subscribed to a declaration m by Mr. Sisson of Rangpur, that "the faith of the State is to the full as solemnly pledge uphold the cultivator of the soil in the unmolested enjoyment of his long-established rig as it is to maintain the zamíndár in the possession of his estate, or to abstain from increas the public revenue permanently assessed upon him." "It is also," the Court said—

Bengal Revenue letter, dated 7th October, 1815, para. 9. Revenue letter to Bengal, dated the 15th January, 1819, paras. 24, 30, 39, 54.

"a circumstance which is not to be overlooked, that although so many years have elapsed since the conclu of (the permanent) settlement, yet no resort has been had to the exercise of the power we then expressly rese of interfering for the purpose of defining and adjusting the rights of the raiyats." "Consequences," Directors observed, "the most injurious to the rights and interests of individuals have arisen, from descri those with whom the permanent settlement was concluded as the *actual proprietors of the land*. This mis (for such it is now admitted to have been) and the habit which has grown out of it of considering the payment the raiyats as rent instead of revenue, have produced all the evils that might be expected to flow from t They have introduced much confusion into the whole subject of landed tenures, and have given a specious c to the pretensions of the zamíndárs, in acting towards persons of the other classes, as if they, the zamín really were, in the ordinary sense of the words, the proprietors of the land, and as if the raiyats had no pe nent interest but what they derived from them."

In 1824, the Directors, addressing the Government of Bengal, observed: "It in the highest degree important that your design of adjusting the rights and interests of th raiyats in the villages, as perfectly in the Lower as in the Upper Provinces, should be carrie into effect." For numerous other quotations and references we may invite Your Lordship's attention to the Notes of Messrs. Mackenzie and O'Kinealy, at pages 389—398 and 418—454 of Volume II of the Report of the Rent Commission (second edition). We will conclud here with an extract from the evidence of Mr. Holt Mackenzie before the Select Committe on the affairs of the East India Company in 1832. After distinguishing the class of raiyat usually residing in a different village from that to which the land belonged, he observed tha the more general tenure in Bengal was that of cultivators possessing a fixed right of occupanc in the fields cultivated by them, or at their charge and risk, whom he would call proprietors o the fields to which the right attached; and he thus characterised the nature of their right:—

Revenue letter to Bengal, dated the 10th November, 1824, para. 33.

"They may be generally described as cultivators possessing a fixed hereditary right of occupancy in th fields cultivated by them, or at their risk and charge; their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage; and the engagment between them and th zamíndár or (in the absence of a middleman) the Government officer, serving, when any formal engagements a interchanged, not to create the holding, but to define the amount to be paid on account of it. They cann t justly be ousted so long as they pay the amount of value demandable from them; that being determined accor ing to local usage, sometimes by fixed money-rates or rates varying with the quality of the land or the natur of the crop grown, sometimes by the actual delivery of a fixed share of the grain produce, sometimes by a estimate and valuation of the same, sometimes by other rules; and what they do so pay is in all cases regarde as the Government revenue or rent, whether assigned to an individual or not, in none depending on the mere will and pleasure of another. There are varieties of right and obligation which one could fully explain only by a reference to individual cases; but this is my general conception of the rights of the class whom I should consider the proprietors of the fields they occupy. In Bengal Proper they are usually called *khádkásht* raiyats (*i.e.*, raiyats cultivating their own), and by this class of persons I believe the greatest part of the lands in that Province is occupied."

Mr. Holt Mackenzie feared that generally the protection afforded to these raiyats was very insufficient.

Conclusions of this Government.

46. Looking to all this and much other evidence, we may express our general concurrence in the opinions offered by the Lieutenant-Governor of Bengal, the Rent Law Commission, and, we may add, the Famine Commissioners, as to the ancient rights of the Bengal raiyats. Indeterminate though those rights were, they at least included the right of occupancy conditional upon the payment of the established rate of rent and the privilege of having that rate fixed by public authority. Under

the Mogul Government the land-tax was collected by farmers or contractors or Rájás, sometimes mere nominees of the ruler of the day, sometimes possessing pre-existent rights of various kinds. The British Government converted this intermediate class into the zamíndárs of the Permanent Settlement, and changed the land-tax of the Moguls into the rents of the zamíndárí estates. But the zamíndárs, though termed "actual proprietors" of the land, were not absolute proprietors as against the raiyats. The latter possessed substantial rights which, at the time of the Permanent Settlement, though not then ascertained and defined, were saved in express terms; and the Government of 1793 reserved to itself the power (of which, indeed, nothing could deprive the legislature) to ascertain and settle those rights at any future time when it might deem it expedient so to do.

Circumstances which obscured the rights of the raiyats.

47. The misapplication of English ideas, the misuse of language borrowed from English law and the English rural system, and the enactment of laws designed to facilitate the collection of rents or to secure to auction-purchasers the means of meeting the Government revenue, were amongst the influences which tended to obliterate, in practice, the rights that the Government had promised to maintain. Nor did the Government always set an example of forbearance in administering estates in its own hands. Nevertheless, it is, in our opinion, clear that up to the date of the passing of Act X of 1859 the resident or *khudkásht* raiyats, at any rate, were fully entitled to claim at least what the Lieutenant-Governor now proposes to give them.

Rights of the raiyats in 1859.

48. From the Statement of Objects and Reasons of Act X, dated the 10th October, 1857, it is manifest that the drafter of the Act, Mr. E. Currie, merely intended to re-enact, in a concise and distinct form, the provisions of the then existing law relating to certain matters which included the rights of the raiyats with respect to the occupancy of land and to the adjustment of rates of rent. He held that the Regulations recognised "the right of all resident raiyats to the occupancy of the lands cultivated by them, so long" as they paid "the established rent;" and he provided in his original draft, that *all raiyats* and cultivators of land (other than hereditary raiyats holding at fixed rates) were entitled to receive *pattás* according to the rates of rent for the time being established in the *pargana* in which the land was situated, or if there were no known and recognised *pargana* rates, then according to the customary rates payable for land of a similar description in the places adjacent. The rule recognising the occupancy-right of all resident raiyats was not to apply to *khámár*, *nij-jot*, or *sír* land belonging to the proprietor of the estate or tenure, and leased for a term or year by year to a resident cultivator, nor (as in regard to the actual cultivator) to lands sub-let to a resident cultivator by a raiyat having a right of occupancy. These conclusions of Mr. Currie as to the rights of the raiyats at the time when the legislation of 1859 was about to be undertaken have now been affirmed by several members of the Rent Commission, after subjecting the question, in its legal and historical aspect, to close and learned scrutiny.

Mackenzie, Fields, II, 384.
O'Kinealy, II, 442.
Mackenzie, II, 398, 474-5.

Reasons for the frame of Act X of 1859, as regards rates.

49. But Act X as passed departed from the language of Mr. E. Currie's Bill. The members of the Committee did not deny that all raiyats, not holding at fixed rates were under the then existing law entitled to *pattás* "at *pargana* rates." But they explained that objection had been raised to this expression on the ground that there were really no known *pargana* rates. They observed:—

"The recognition of a right of occupancy in the raiyat implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sadr Court, and Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the raiyat to hold at 'customary and fair' rates. We have adopted similar phrases, and in this section and in sections 17 and 18 have endeavoured to lay down rules by which the 'fairness' of the rate may be ascertained."

It would seem, therefore, that the grounds on which alone the rents of occupancy-raiyats may be enhanced, as declared in the present law, were intended to provide a substitute for the old *pargana* rates which had fallen into desuetude. The old rates being unascertainable, fair and equitable rates, as defined in the Act, were to take their place.

The same, as regards the twelve-years' rule.

50. The reasons for the introduction of the twelve-years' rule were thus explained by the Select Committee:—

"The laws in force speak of '*khudkásht* raiyats' as possessing rights of occupancy, and in some places the word *khudkásht* seems to be considered synonymous with *resident*. Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognised right, that a holding of the same land for twelve years should be considered to give a right of the occupancy. We have followed this precedent and altered the section accordingly."

We have referred to the papers from the Board of Revenue in the North-Western Provinces which were before the Select Committee when this passage was written, and we feel no doubt that the intention of the twelve-years' rule was to maintain the then existing rights of the great majority of the settled cultivators. We have, indeed, the statements of the authors of Act X to show that they meant to include amongst raiyats entitled to the occupancy-right some who would not, technically speaking, come under the designation *khudkásht*; and it is certain that in providing for the future accrual of the right, they opened to raiyats, who had not previously enjoyed security of tenure, the prospect of attaining it in course of time.

Resident raiyats.

51. To the case of the non-resident raiyats we shall return below. Here we would point out that the changes which have passed over the face of the country in the Lower Provinces have made it difficult for the original resident raiyat to vindicate his ancient rights. In many cases the residential village and the lands belonging to it have ceased to be the property of a single landlord, and have, under the operation of the Partition Laws, become divided among several estates. The landlords as a class will only recognise as resident raiyats, raiyats actually living on the 'estate'; for in the decay or disappearance of the communal village, it is the estate which has become the new unit of property. But as regards all raiyats possessed of customary rights, it is now settled that Act X was intended to be an additional, and not an exclusive, enactment, and that nothing in its terms was meant to interfere with their status. It has, however, come to be regarded as a complete code in itself, and the effect of the statutory definition of the occupancy raiyat embodied in it has been to injure seriously the ancient rights of the *khudkásht* raiyats, by putting them to proof of their having held for twelve years not merely in the village and the village lands or even in the estate, but in every one of the particular fields or plots in respect of which they claim to have rights of occupancy. The consequence is that landlords are able to break down the pre-existing rights of their raiyats, which can now only be established, if at all, by means of the twelve-years' prescription; and this it is, unfortunately, in the landlord's power to interrupt. Moreover, section 7 of the Act gives validity to contracts in defeat of the accrual of occupancy-rights, and is being utilised to divest the villagers of the old privileges attaching to their status.

Report of Famine Commission, Part II, page 119, para. 27.

Practices by which the protective intention of Act X of 1859 is defeated:—

In the North-Western Provinces.

52. The Famine Commissioners observe in their report: "One of the most prevalent forms of oppression on the part of the landlords is their habit of breaking up the holdings of their tenants, and compelling them to change the fields they cultivate, with a view to the destruction of occupancy-rights, or rendering them indistinct where they exist, and preventing the accrual in the case of tenants-at-will." We have reason to believe that practices of this kind do, in fact, prevail in many parts of India. In the North-Western Provinces during the year 1878-79, the increase in the number of notices of ejectment was marked in every division and in every district, and the Board of Revenue observed that the proprietary classes had exhibited a very general anxiety to prevent tenants and lessees from acquiring occupancy-rights. In the following year the Commissioner of Allahabad reported, "as the twelfth year of occupation approaches, notices are invariably served" "Landlords," said the Board, "are, naturally enough, anxious to prevent the growth of occupancy-tenures, and the Local Rent Act virtually points out to them the easiest way of effecting this object, *viz.*, by ejecting tenants-at-will before the twelve-years' occupation, which creates a right of occupancy, is completed." The efforts of the proprietors to extinguish occupancy rights have been frequently noticed in reports from the Central Provinces. In 1874-75 the Deputy Commissioner of Jabalpur had "seen many instances where the *málguzárs* are carefully causing their tenants to give up the land they have held for 11 years, in order to prevent their acquiring occupancy rights." The Deputy Commissioner of Seoni stated that the absolute occupancy and Act X occupancy-holders were being slowly but surely ousted by the *málguzárs*. In 1875-76 systematic attempts to prevent tenants from acquiring rights under Act X appear to have occurred in the Jabalpur District. In 1877-78 the Chief Commissioner wrote:—"There is no doubt a general cause at work which is calculated to produce a gradual increase in the number of suits for ejectment, *viz.*, the desire of *málguzárs* to prevent the accrual of occupancy-rights which leads them, as the end of the twelve-years period since the settlement approaches, to take more and more active steps to eject those tenants who would otherwise, by continued occupation, pass out of the class of mere tenants-at-will." The Deputy Commissioner of Saugor, in 1878-79, speaking of occupancy-tenants and occupancy-rights, said: "There is a strong animus against these tenants among all the *málguzárs* of this district, and (as in other districts) they use their best efforts to oust every tenant who has succeeded in acquiring those rights, and do their best to prevent any such further acquisition, by applying to the Court to issue notices of ejectment on all tenants who have held for nearly the prescribed time." In the report, however, for the year 1879-80, the Chief Commissioner observed: "The eventual result of a twelve-years' occupancy rule, or an occupancy rule laying down any fixed period for the accrual of occupancy-right, must ordinarily be to cause a disturbance of possession in order to check the growth of a class of privileged raiyats. Any such rule is disastrous to the well-being of the cultivating class wherever there is a struggle for land. In these Provinces, in most districts, there is no such struggle, and as a fact the occupancy-right is allowed to accrue in a large number of cases."

Board's Report, page 28.

*Ibid*, 179-80, pp. 26-27.

In the Central Provinces.

Annual Report, page 40.

*Ibid.*

Annual Report, page 47.

Annual Report, page 29.

Annual Report, page 20.

Annual Report, page 24.

II, 248. 251.

In Bihár.

53. In Bihár, it is said that not one-quarter per cent. of the raiyats hold pattás; and "an examination of the *jamabandí* papers (rent rolls) of Bihár estates has shown that while 60 per cent. of the present raiyats have held some land in the villages in which they reside for more than 12 years, less than one per cent. of them hold at present the same area of land which they held 12 years' ago. Inasmuch as these raiyats hold no *pattás* or other documents showing which are the particular fields which they have held for more than 12 years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy-rights even where these rights exist beyond all doubt." The Collector of Patna reports that whenever the zamíndár has felt himself strong enough to break occupancy holdings, he has done so; and that the landlords are very active in shifting the tenants from time to time

Metcalfe, III, 705-6.

to prevent the acquisition of occupancy-rights. The zamíndárs of Shahábád, at a meeting held on 30th October, 1880, at Arrah, deprecated the concession to resident raiyats of rights of occupancy in lands held by them for three years. "At present," the zamíndárs said, "landowners prevent the growth of occupancy-rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Courts find claims to occupancy-rights not proved, unless the raiyat can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zamíndárs would not suffer raiyats to remain for three years." "Interchange of lands," observes the Officiating Collector of Saran, Mr. McDonnell, "between raiyats in a zamíndári occasionally occurs, but it is the rare exception, not the rule. Manipulation by the *patwárís* of the village *jamabandís* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a change in the rates." The Mahárájá of Darbhanga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the raiyat showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right.

III, 729. II, 737. IV, 382.

54. In Bengal Proper, the Commissioner of the Chittagong Division states that most landlords have been taking precautions against allowing their raiyats to obtain occupancy rights. A petition from the cultivators of the Attia Sub-division of the Mymensingh District alleges that the zamíndárs are busy sending their dependents and club-men about from village to village to take leases for limited periods from raiyats likely to be entitled to rights of occupancy under the provisions of the draft Bill of the Rent Commission. The Collector of Purneah asserts that it is the practice in many districts to take *kabúliyats* from raiyats for fixed terms, which are renewed or not at the pleasure of the landlord, and that, in this way, the accrual of the right of occupancy has been prevented. The Collector of Dháká reports:—At present, as long as they (the raiyats) pay their rent, they are not in much danger of having their tenancy interfered with, unless the landlord is anxious to prevent their acquiring a right of occupancy." The Collector of Faríd pur has heard that a large landlord of that district has issued, in anticipation of the enactment of the Bill of the Commission, hundreds of temporary leases for the purpose of preventing the acquisition of rights of occupancy under the new law. Your Lordship will have noticed that the Pabná disturbances originated in a case in which the landlord had attempted to obtain agreements from the tenants, admitting that he might eject them on displeasure. Mr. Wace, the Officiating Collector of Bírbhúm, is of opinion that the tendency of the Bill of the Commission would be to foster the execution of formal leases and to make the insertion of a clause barring the growth of a right of occupancy even more common than it now is. "There are doubtless many raiyats," says Mr. Reynolds, "who have been induced to execute contracts which specify no term of years, but which provide that the right of occupancy shall not accrue, and that the lands shall be surrendered to the zamíndár on his demand." The Commissioner of Chutiá Nágpur refers to the disturbance of rights by extraneous and unauthorised action on the part of the landowners, and to attempts made to deprive the tenant of the privileges which are admittedly vested in raiyats who have held land for 12 years. Mr. Nolan, a Collector who is said by the Lieutenant-Governor to know both Bengal and Bihár, believes that occupancy rights are being very rapidly extinguished, especially in Eastern Bengal. Mr. O'Kinealy remarks that twice in the course of the last 70 years have great attempts been made to treat the raiyats of Bengal as tenants-at-will, and to reduce them to the position of the *pakhasht* raiyats of the North-Western Provinces—first, after 1812, when the zamíndárs, admitting that they could not eject, sought to attain their object by claiming a right to enhance at discretion; and secondly, at the present time, when, though unable to enhance at discretion, they are seeking the same end by dispossession after notice. Mr. Reynolds holds that it is now the avowed object of the zamíndárs to restrict and destroy the right of occupancy.

In Bengal Proper.

III, 477. III, 555. III, 592. III, 608. III, 609. III, 632. IV, 254. III, 681 III, 715. II, 441. III, 1004.

55. Plainly an Act intended to affirm the then existing occupancy-rights of the great mass of the settled cultivators is being deliberately defeated in practice; partly by the assumption, now usually impossible to controvert by judicial proof, that such rights did not exist antecedently to that Act, but were meant to accrue under its provisions; and partly by legal or illegal measures taken by the zamíndárs under colour of the law and in consequence of that assumption to prevent the accrual of such rights. Whether the fields be changed, or evidence be manufactured in the zamíndárí accounts, or written renunciations of permanent right be extorted from the ignorance or weakness of the peasantry, the object is one which is opposed to public policy. Even if no more decisive step were advisable, it would, we think, be imperatively necessary to provide that shifting occupancy within the same village or estate shall count as continuous occupancy; and to declare, as is proposed in the Bill of the Lieutenant-Governor, that no contract shall in any case debar a raiyat from acquiring the occupancy right. But such provisions would have wide consequences. If the estimate of the Bihár Committee may be generally accepted, they would affect not less than 60 per cent. of the raiyats in Bihár; nor can it be doubted that the avoidance of past contracts debarring the acquisition of the right would have, in Bengal Proper, an extensive operation. In these circumstances, as a change involving very far-reaching effects seems inevitable, we think that a complete remedy is more expedient than any partial reform, which, however unavoidable, would have to encounter equally strong opposition.

Consequent necessity for an amendment of the law producing wide effects.

Failure of Act X of 1859 in respect to enhancement.

56. Before we pass on to discuss more particularly the remedies recommended respectively by the Lieutenant-Governor of Bengal and by ourselves, we would add some brief remarks to what we have already said in regard to the failure of the present law of enhancement. It is not necessary for us to express any opinion on the question, debated at length in the papers, whether before 1859 the zamíndárs were generally entitled to enhance the rents of the raiyats. Practically they did enhance the rents, though they had no legal claim to raise them with any direct reference to the increasing value of the produce. The practice of enhancement was sanctioned by the legislature, the admission being simultaneously made that the old *pargana* rates were undiscoverable; and whether or no the authors of the Settlement of 1793 intended that the rates of rent should be permanently fixed equally with the amount of the land revenue, it is not now proposed by any one to withdraw the legal right of enhancement which has been conferred upon the zamíndárs. On the contrary, we desire to provide for the adequate enjoyment of that right, which, as is notorious, cannot be effectively exercised under the present law. We need not dwell on the circumstances which have led to this result. The rule of proportion laid down in the case of *Thakuráni Dási, viz.*, that where the enhancement is claimed on the ground of the increase in the value of the produce, the enhanced rent shall be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce bears to the previous value, has miscarried in practice, because it has thrown upon the Courts of Justice the duty of conducting economic investigations of extreme difficulty. The first term in the proportion is the former gross value of the produce at the time when the rent was previously fixed. Not only may that time be remote and hard to prove, but even if it be ascertained, it may well be impracticable to show the amount and value of the produce at that period. One proprietor is said to have spent a lakh of rupees in enhancement litigation without much practical result, before the inutility of the present law had been demonstrated. The zamíndárs now seldom, if ever, attempt to work the rule of proportion in their own interests. In fact, the British Indian Association states that the rule has been shown by experience to be unworkable; and this conclusion is accepted by the Bengal Government and by ourselves.

Digest, 242.

111, 991.

Method of recognising raiyats' rights proposed by the Lieutenant-Governor.

57. We come now to state our own specific proposals; and here we shall follow the course indicated in the third paragraph of this despatch. Although we shall allude to the terms of the Lieutenant-Governor's Bill, in order both to make our meaning clear and to prevent future misapprehension or oversight, we shall not put forward amendments in any technical form, but shall merely explain what in our opinion ought to form part of the substance of the measure. With this remark, we would invite, Your Lordship's attention to section 19 of the Lieutenant-Governor's draft, and to the definition of *raiyat* in section 3. The definition has been framed so as to exclude under-raiyats, or persons to whom the ordinary village raiyats have sub-let their lands, and persons of the *korfa* or *bhág-jotdar* class, that is, the lowest class of occupants below the raiyats cultivating usually on a *metayer* tenancy. It is then declared that every resident raiyat has a right of occupancy in any land which he as a tenant holds, or as a tenant occupies and cultivates, paying rent for the same, whether such land be held or occupied under a lease or otherwise. From this rule are excepted the private lands (known as *khámár, nij-jot,* or *sír*) of the proprietor, when held immediately under the latter for a term or year by year. Next comes an attempt to determine by legislative definition what raiyats shall be deemed to be resident raiyats. "A resident raiyat," it is said, "is a raiyat who has his fixed habitation in the village within which he holds or cultivates land as a tenant, or who has held and paid rent for the lands in respect of which a right of occupancy is claimed by him for three successive years or more, provided that such lands lie within a distance of not more than two miles of his fixed habitation." A raiyat is said to acquire a fixed habitation by residing within the same village for three years or more; and the village is to be the area shown within the village boundary on the revenue survey maps. The Lieutenant-Governor's proposal amounts, in fact, to the creation of an artificial village, residence and cultivation within the boundaries of which shall entitle all settled raiyats to rights of occupancy in their lands. The proposal is supported by the argument that the spirit of the old rule which postulated residence within the communal village is best preserved by fixing a limit of distance from the raiyat's house; and a departure from the strict and universal observance of that rule certainly is not inconsistent with the principle of Act X of 1859, which has admitted many non-resident raiyats to rights of occupancy.

Comments on the above.

58. But in considering this proposal as worded in the Bill, it must be recognised that many of the zamíndárs will utilise to the utmost extent any opportunity of annihilating the claims of the raiyats which may be afforded by the law. The above definition of a "resident raiyat" would make it the interest of the zamíndárs that no raiyat should hold land in the village where he had his fixed habitation. It would be an advantage to the zamíndár to arrange that the village lands should be cultivated as much as possible by outsiders, and a disadvantage to him if any raiyat were suffered, by three years' residence, to acquire a fixed habitation in any village. Further, in the case of outsiders, or persons holding or cultivating land in villages where they did not reside, it would be the interest of the zamíndár, both that their places of residence should be more than two miles from their fields, and that none of them should hold the same land for three years in succession. We fully admit the absurdity of supposing that zamíndárs could cause the great majority of their cultivators continually to shift about from one village, or even from one set of fields, to another. Nevertheless we think that it is contrary to public

policy that the zamíndár should find it to his benefit to oust his raiyats, or any of them, either from house or lands. We would take every precaution in our power to prevent the extinction of the occupancy-right by disturbance of possession; and we apprehend that in course of time, individual raiyats might become unable to prove their rights under the operation of the Lieutenant-Governor's proposal. It appears to us inexpedient to attempt to create any artificial village in the manner proposed in the Bill, and it has been pressed upon us that in any case the two-mile radius is altogether insufficient to cover the area round their houses within which settled raiyats carry on permanent cultivation.

No middle course can secure the rights of resident raiyats.

59. In these circumstances, it is incumbent upon us to make some alternative proposal; for we entirely concur in the opinion of the Lieutenant-Governor that the substantive law touching the occupancy-right must be amended so as to prevent the old and unquestioned privileges of the raiyats remaining in jeopardy and being, in many cases, broken down. We have considered numerous recommendations framed on the principle that the insecurity existing under the present law should be corrected without proceeding to the length of establishing fixity of tenure as the right of all classes of raiyats, those only being excepted whose cultivation is of a temporary kind. Our conclusion is that no middle course is compatible with the attainment of our chief object. The occupancy-right must be made the general, nearly the universal, rule, if existing privileges are to be effectively maintained. The suggestions before us either obviously fall short of the requirements of the case, or virtually amount to the general recognition of occupancy-rights in behalf both of resident raiyats and others.

Resident and non-resident raiyats.

60. Sir Ashley Eden has, indeed, remarked on the present occasion that the extension of occupancy-rights to non-resident raiyats, which was effected by Act X of 1859, was opposed to the custom of Bengal. No doubt this view is, strictly speaking, correct, if by the occupancy-right be meant the particular set of privileges which constitute it under the present law It has, however, been urged with considerable force of argument that there existed in Bengal no such broad line of demarcation between 'resident' and 'non-resident' raiyats as was to be found in Upper India, where the village communities still held together in more or less identifiable form; and it is stated that very erroneous conceptions of the rights of raiyats in Bengal have been made current and been perpetuated by the loose way in which the terms *khudkásht* and *paikásht* are employed at the present day in common parlance and even in official documents, the general impression being that the classes referred to were entirely distinct from one another, and possessed of very different rights. In fact (so it is argued by those who support these views), though some communal rights may survive in Bihár, throughout Bengal generally the disintegration of the village communities had become complete long before the time of the Permanent Settlement; in many parts of Eastern Bengal there is good reason for believing that they never really existed; the demand of Government revenue was in every part of the Lower Provinces distributed down to the individual raiyat; and but few traces are to be found of anything like lump village assessments. Accordingly, the resident raiyats of a Bengal village (where villages existed) had no common interest in all the village fields; but held each his own plots, paying to the Government representative, and after the Permanent Settlement to the zamíndár landlord, rent at the established *pargana* rates. The *paikáshts* or non-resident raiyats, where they were not, as an inducement to settle and cultivate, paying actually lower rates, paid precisely the same *pargana* rates. Neither class could be forced to pay more than the *pargana* rate of rent (Regulation IV of 1794, section 5). Both, it is believed, were protected against arbitrary eviction. Both therefore enjoyed practically all the benefits usually attaching to an occupancy-tenure, though in legal phraseology the occupancy-right continued to belong only to the 'resident' raiyat strictly so called, and he only was specifically protected against a purchaser at a sale for arrears of revenue. This protection against an auction-purchaser was in fact the only distinctive privilege which the Bengal Regulations conferred on the *khudkásht* raiyat. The auction-purchaser was at liberty to cancel any agreement made by his predecessor with a *paikásht* raiyat; but if he elected to allow such raiyat to remain on the land, he could demand from him only the pargana rates of rent (Regulation XI of 1822, Sections 30, 32 and 33). It is thus concluded that in the matter of rent rates and protection from arbitrary eviction, all raiyats were on a par. Further, it is pointed out, that if it is decided to maintain any distinction between resident and non-resident raiyats as such, the legislature must face the difficulties of definition. Residence cannot be referred to the village in the old sense, for that no longer exists, or has never existed, in the shape which the definition must pre-suppose. Nor can it be referred to the estate, for the residential village has been often split up and divided between several estates. The fact, it is said, is that the terms 'resident' and 'non-resident' have been used in Bengal without any attempt being made to ascertain what their true legal and practical value is; and where, as is generally the case lands are let at one and the same rate to all classes of applicants, nominal distinctions of this kind must necessarily have tended to lose force.

IV, 10.

Mackenzie II, 382, 383, 384, 391, 393, 395, O'Kinealy, II. 430, 434, 440, 441, 442, *et passim*

O'Kinealy, II, 439, *et seq.*

Different schemes for distribution of occupancy-rights.

61. The learning and ability with which these arguments have been advanced render it undesirable for us to pass them over in silence. Nevertheless we do not base our proposals upon them because they cover, as we are well aware, much debateable ground. What we seek is a thorough remedy for a practical evil; we aim at a determination of the case which shall be broadly just to interests which must, at some points, conflict. With this object we have examined the various schemes which different authorities have supported; and we shall here briefly notice the chief of them in succession.

I, 48-9, 129—131.

(1) The Rent Law Commissioners proposed, in the fourth chapter of their Bill, to institute a new class of raiyats, *viz.*, those who had held land for three or more, but less than twelve years. The idea apparently was to discourage eviction by the requirement of compensation for disturbance and other expedients, so that the landlords might suffer the raiyats of three years' standing and upwards to hold on till time should ripen their tenure into an occupancy-right. This attempt to devise a novel status, entirely unknown either to law or custom in Bengal, met with absolutely no support and has been completely abandoned.

IV, 259. Report of Famine Commission, Part II, page 119, para. 27.

(2) The Famine Commissioners have suggested another compromise. They would "declare that all tenants who have been resident and have cultivated land in the village for twelve years and upwards are entitled to occupancy-right in their land," and would "restrict the exceptions to this rule to the cases in which the landlord can show that a tenancy on a different footing has been expressly created by act of parties." Under this proposal, the practice of pressing the cultivators to deliver written resignations of their rights would be maintained; and it would be the interest of the zamíndárs, not merely, as at present, to disturb, or appear to disturb, the raiyats in the possession of particular fields, but further to evict them from both house and lands, turning them out of their ancestral villages.

(3) Another plan, starting from the same point of departure, would avoid some difficulties only to encounter others of almost equal extent. Contracts debarring the acquisition of the occupancy-right being avoided, the Bill might accord such right to every raiyat who had held, for the twelve years next before the passing of the law, any land either in one and the same village, or under one and the same landlord. It would not suffice to limit the right to those who had held in the same *estate*, for the estate might include only a part of a particular village or villages; and thus the old right flowing from village residence would in some instances be lost. Here, if all rights could be recorded within a few months, or even a few years of the passing of the Bill, the consequence would be that the occupancy-right would be assured to almost every raiyat in Bengal. But the process of recording rights would take time to accomplish. The twelve-years' rule, therefore, as thus proposed to be modified, would have to be made prospective as well as retrospective in effect. Wherever it was prospective, zamíndárs could combine to bring in raiyats residing on neighbouring estates to carry on the cultivation; they could, to speak plainly, exchange their raiyats, so that none could prove a period of twelve years' cultivation either under the same landlord or in the same village. If, on the other hand, the rule were not to be a prospective one, the lapse of time would increase the difficulty of proving continuous occupancy before the passing of the Bill; and in thirty or forty years raiyats who held no decree or public record declaring their status would probably be no better able to prove their rights than they are now.

(4) All the above proposals lay the right open to greater or less probabilities of defeat by taking as a test a sharply-drawn limit of time. The objection applies with special force to the idea that the right should simply depend on a three years' instead of on a twelve years' prescription. If that principle were adopted, cases would occur in which raiyats would not be suffered to remain in possession even for that short period.

(5) Acknowledging the risk of a limit of time, some would rely upon a classification of raiyats; and reverting to the principle of the Lieutenant-Governor's Bill, would try to find some fresh method of determining who are to be considered the resident raiyats entitled to rights of occupancy. On the understanding that a system of village records and field surveys will be introduced in Bengal (as we shall recommend below), it has been proposed to leave the term "resident raiyat" undefined in the law; and it is urged that the officers making the local inquiries could readily ascertain, and register the names of, the right people. This idea defers the difficulty without solving it. The investigating officers would need the guidance of some principle upon which to proceed; and the principle would have to depend upon residence or prescription or upon both. It will take many years to prepare the village records. The officers would endeavour to record the rights of *khudkasht* raiyats; and when they reached the last districts many years hence, there might be few *khudkasht* raiyats left whose rights they could record.

Beames, III, 892.

II, 473

(6) The language of the late Mr. Justice Norman—declaring that any raiyat who can prove an intention of remaining at his place of settlement, and who has been recognised as a fixed resident of the locality, shall be presumed to be a resident raiyat—seems defective, because it throws the burden of proof upon the raiyat, who would have to produce evidence of his recognition as a resident. Nor does it escape the consequence that raiyats might be compelled to change their abodes.

(7) There is an apparent adherence to tradition in the suggestion that every raiyat shall be presumed to be a resident raiyat in the absence of proof to the contrary. But for all practical purposes it would be preferable that the presumption should be made conclusive at once. A provision to correct the effect of actual or supposed change of fields within the estate or village would be indispensible. A zamíndár seeking to prove that any raiyat was not entitled to a right of occupancy would have to rely upon custom; and a custom is "a succession of instances from whose constant recurrence a rule is inferred." The zamíndár would therefore be required to show that raiyats of the same class had been habitually evicted in the same neighbourhood, not from particular fields or holdings, but from the village or estate. Probably no zamíndárs could do this at the present time. In the future, the harsh landlords would be encouraged to resort habitually to eviction.

Sir Henry Maine, Panjáb Tenancy Blue Book, page 357.

(8) Lastly, it has been proposed to define a "resident raiyat" as a "raiyat who, in pursuance of an intention of residing for not less than three years, has his sole or principal residence in the village within which he holds or cultivates *raiyatti* land or at some place within

five miles of the *raiyatti* land in respect of which a right of occupancy is claimed by him," adding that "in the absence of proof to the contrary, a raiyat's principal residence shall be deemed to be the place at which his family ordinarily resides." This definition abandoning, as it does, all necessary reference either to any real or artificial village or to the estate, really rests upon an arbitrary limit of distance. Without raising any objection to it on this ground, we may point out that the limit of distance is so wide as practically to include all raiyats. None would be excluded by this definition except mere temporary sojourners.

We could mention other schemes which have occupied our attention, but it is needless to prolong the list. Of those above enumerated the first, second, and fourth would certainly fail; the third, fifth, and sixth would operate very unevenly; and the seventh and eighth practically ignore the distinctions which they purport to maintain. The occupation necessary to give a prescriptive title can be interrupted or in course of time, may become difficult to prove. If the class of residents be determined by a short limit of distance from the cultivation, interference can be exercised so that the fields shall be tilled by peasants from more distant homes. If the distance be increased so as to avoid this evil, the distinction between residents and non-residents disappears.

The right of occupancy should be attached to all raiyatti land.

62. This being so, we think it useless to cast about for any further expedients of the kind above discussed. It seems impossible to distinguish, in any practical manner, between resident and non-resident raiyats without endangering the rights of the original villagers. We prefer simply to take the land as the basis of the occupancy-right and to declare that all raiyats holding or cultivating *raiyatti* land shall have a right of occupancy therein. The occupancy right would then attach to all *raiyatti* land without exception, that is to say, to all land that is not *khámár* or private land. II, 439 III, 750-51. IV, 382.

Certain cultivators and others excluded from rights of occupancy.

This plan is doubtless a comprehensive one; but to confound it with the indiscriminate grant of occupancy-rights to all classes of cultivators would involve very serious mistake. The right would not be conferred upon the under-raiyats,—the *karfas* and *bhag-jotdars*, who would, as already said, be excluded by the definition of raiyat. It is stated that there are flitting tenants in Purniyá, Dinájpur, North Rajsháhi, and South-West Bográi, who come from a distance, rent land for a season or a couple of years, and then resign their holdings and take their departure. No rights of occupancy should be conferred on semi-nomadic tenants of this description. But whilst, on the one hand, we thus acknowledge that many actual cultivators of the soil can now make no claim to a permanent tenure, on the other hand we desire to keep the land as much as possible in the possession of the cultivating class. For these purposes some limit of distance might be useful, but it would have no reference to village residence. Whilst, therefore, declaring in general terms that every raiyat has a right of occupancy in any *raiyatti* land which he holds or occupies, we would except from this declaration persons living at a considerable distance from the land claimed. The exact limit of distance which would exclude the nomad tenants would be a matter of detail to be settled by the legislature; it should be wide enough to include all settled raiyats. In parts of the country where special measures were needed to prevent the occupancy holdings from passing into the hands of absentees who have ceased to be, or never were, peasants, and of townsmen, money-lenders, and the like, taking no part in tillage, and living at a distance on the rents derived from the labour of sub-lessees, we would prohibit, in express language, the acquisition of the right by those who are not agriculturists. We shall return to this point below when discussing the questions of sub-letting and transfer.

Non-resident raiyats.

63. Before, however, we leave the present subject, we would add that, apart from every argument hitherto mentioned, the occupancy-right, so far as this involves fixity of rent rates and protection from eviction, must be recognised as belonging to, or be now conferred upon, the non-resident raiyats who have not already been promoted to the occupancy status by the twelve-years' rule, unless, on the present full consideration of the subject, the decision be that they shall be deprived of rights to which they were, on the best construction of the law, entitled up to 1859. We should regret such a decision as being highly inexpedient: for we desire to protect all raiyats from rack-renting, and no such protection can be permanently afforded without security of tenure. If a right of occupancy implies limitation of rent, the converse is equally true; a title to a beneficial rent implies a right of occupancy. A claim to an easy rent is worthless if it can be met by the threat of eviction. Now it has been established beyond doubt, as we think, in the present discussions, that under old law and custom, the non-resident raiyats could not be required to pay more than the *pargana* or customary rates. When the application of those rates resulted in a rack-rent, this was of no advantage to them. Ordinarily they would have paid less than the *pargana* rates, or they would have resigned their fields. But wherever, owing to the extension of cultivation, the rise in price, or other causes, the application of the *pargana* rates resulted, not in a rack-rent, but in conditions of beneficial occupancy, the old customary privilege, as to rates of rent, enjoyed equally by the non-resident raiyat and others, acquired a substantial value. This would be the worst possible reason for depriving the non-resident raiyat of what, when it had no value, he was entitled to claim. Obviously, he must now lose the privilege for ever, unless we accord him fixity of tenure.

Khámár lands.

64. As regards the landlord's *khámár*, or private, lands, we would generalise the provisions of Section 83, now applicable only in Bihár, and in the case of similar lands there known as *zerat*. No one should be deprived of any occupancy right acquired in such lands before the commencement of the new

law; but for the future such lands should be at the disposal of the zamíndárs, free from all rights of occupancy. Precautions would, however, have to be taken to prevent landlords from unduly extending their private lands and converting into *khámár* land, land that either is, or might become, *raiyattí*.

Proposed re-establishment of pargana rates.

65. We pass now to the incidents of the right of occupancy. The most important incident would be the privilege of paying rents according to the Collector's Table of Rates. We have supported the proposal to re-establish *pargana* rates, suited to present necessities, for the reason, amongst many others, that it harmonises well with the old customs of the country. In illustration of this view we may refer to the well-known vernacular expression for "breaking the rates," implying an authoritative fixity in the rates which ought not to be impaired; to the whole system of illegal cesses or *abwábs*, those extraneous additional payments kept separate from the rent which are voluntarily made by the people in preference to submitting to alterations in the rent rates; and to a singular survival in the Gayá District where *sikmi* lands
III, 710-11. though subjected to *abwábs*, are held at a fixed rent, such lands being the only lands in that district for which rent was paid in money at the time of the Permanent Settlement. But the best illustration is that Tables of Rates have actually been prepared, and with good results, in some districts of Bengal. In the despatch of the 15th January, 1819, the Court of Directors (after observing in the passage already cited that the power of intervention expressly reserved at the time of the Permanent Settlement had not been used) proceeded to say :—

"We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference. We find, however, that antecedently to the Permanent Settlement this power was successfully exercised in several parts of the territory under your Government, and that the advantages of this policy are still felt in those districts, although the general system of your Revenue and Judicial administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly allude to the 24-Parganas and to part of Dinájpur, when it was under the management of the late Mr. Hatch. In the vicinity of Calcutta also, 'the raiyats,' as Mr. Colebrook understood, 'have been supported by the decision of Adálats, in their pretensions to hold their lands upon the rents payable by them, or by the person whose representatives they are, according to the best general measurement which was undertaken by the authority of Government before the Permanent Settlement, and of which the record is understood to be preserved in the office of the Collector.' It is also stated by Mr. Colebrook that 'the Regulations of Benares have maintained the table of rates of Fáslí 1187, and that the kánúngo office yet exists in that province for its preservation.' Mr. Sisson, in the Report to which we have already referred, adverting to the measures that had been adopted in 1788, in Dinájpur, states that Mr. Hatch ascertained by a local investigation, *1st*, the several varieties of rate and pattá, and the proportion at which the illegal cess was made, in the several estates, to bear to the recorded rental; *2ndly*, by actual measurement, 'the extent of cultivation in each pargana;' *3rdly*, that he reduced 'the qualities of land in each pargana to a certain number of classes, which might readily be distinguished one from the other;' *4thly*, that he ascertained 'the average gross produce of each class;' and *5thly*, that he determined, 'reference being had to the present and former rates of rent, what proportion of the average produce should, in each class, be retained by the raiyat, and what proportion of a fixed money valuation should be received by the zamíndár.'"

Right of raiyats to protection.

II, 97 66. Mr. Holt Mackenzie, in his evidence of 1832, mentions that the essential rights of the tenantry had been preserved by such proceedings in the immediate neighbourhood of Calcutta, and that rates, leaving tenures of value to the raiyats, had been maintained in Dinájpur. Mr. Westmacott, who is
III, 911 well acquainted with that district, reports, writing on the 30th April 1881, that a universal respect is still paid to the *pargana* rate as determined by Mr. Hatch in 1790. We concur in Mr. Westmacott's remark that, although at the time of the Permanent Settlement it was clearly laid down what the Government was to receive from the zamíndár, there was, almost universally, an omission to perform the other half of the work and to declare what was to be paid by the raiyat. Such a declaration was made by Mr. Hatch in Dinájpur, and, perhaps, by a few other Collectors elsewhere; as a rule, it was neglected, and thus, whilst we protected the zamíndár against ourselves by fixing the payment to be made by him in perpetuity, we gave the raiyat no adequate protection against the zamíndár. Late as it is, we propose now and henceforward to afford the raiyat this protection, which is justly his due. We would cause authoritative Tables of Rates to be declared on the passing of the present measure, a step which ought to have been taken ninety years ago.

Character of the operations intended.

67. The work of preparing such Tables could only extend gradually to the different districts; some years would elapse before the Tables were completed in all parts of Bengal Proper and Bíhár; and the operations would very nearly amount to a settlement of rents for tracts of country. According to the Lieutenant-Governor's present intention, the rates would be thus ascertained or revised by Collectors of districts with the help of assessors. We do not enter here upon the question of the best agency for such a purpose; it will suffice, on this occasion, to say, that while we think there may be reason to question whether the Lieutenant-Governor has fully estimated the extent and character of the work, he would doubtless wish to employ the most efficient agency which could be secured without incommensurate cost. The settlement would not include the determination of the rental of each field as is proposed by the Famine Commission. It would be limited to the authoritative declaration of the rates of rent equitably payable by occupancy raiyats for recognised classes of land; and to an authoritative estimate of the average value of the gross produce required for the purpose of fixing a limit to the rents of other raiyats.

Objects of the grounds of, and positive checks on, enhancement.

68. In this view, the grounds of enhancement laid down in section 23, and the positive checks on enhancement prescribed in section 24, are intended to serve three distinct purposes; *viz.*, first, to govern enhancement suits in the Civil Courts, pending the publication

of the Table of Rates for the tract or district; secondly, to declare the principles upon which the officers charged with the preparation of Tables of Rates shall proceed; and, thirdly, to guide the decisions of the Courts in some particulars after the Tables shall have been completed and approved.

Temporary operation of sections 23 and 24.

69. We think these several objects should be distinguished in the Bill with greater perspicuity. Sections 23 and 24, in so far as they will have a merely temporary operation, do not appear to us to call for much discussion. Where the enhancement is claimed upon the first ground, namely, that the rate of rent paid by the raiyat is below the prevailing rate paid by the same class of raiyats for land of a similar description and with similar advantages in the vicinity, the substitution of the expression "in the vicinity" for the words of the present law, "in the places adjacent," may make the prevailing rate rather easier to prove. Where the landlord relies upon an increase in the productive powers of the land or in the price of produce, the provision that the former period with which comparison is to be made shall be either the time when the rent was fixed or any subsequent time, will, by admitting the second alternative, facilitate the proof required in enhancement suits. But neither section 23 nor section 24 is free from the objection that the Civil Courts will, for a time, be obliged to undertake economic inquiries for which they are not well fitted. We should not anticipate that the zamíndárs would attempt to make any considerable use of these sections until the further measures in contemplation had been carried out; and we admit that if no other means were to be provided for effecting legitimate enhancements of rent, the landlords might reasonably contend that the legislature was offering them slight, if any, advantage. We desire, however, to shorten, as much as possible, the interval during which no authoritative Tables of Rates will be in existence; and we have therefore suggested to the Bengal Government that the preparation of such Tables shall be begun forthwith. The needful executive investigations can be made without any change in the law; and there would be a very appreciable gain if the rates were ready for declaration in any localities, as soon as the Bill had been passed.

Consequences of publishing a Table of Rates.

70. When such a Table had been published under the new law, the zamíndárs and raiyats could privately adjust their rents upon the basis of the Collector's assessment; or, if they failed to agree, the zamíndár could bring a suit in the Civil Court, but only upon two grounds, *viz.*—

*First*, that the rate of rent paid by the raiyat was below the rate declared by the Table to be payable for land of a similar class; and

*Secondly*, that the quantity of land held by the raiyat had been shown by measurement to be greater than the quantity for which rent had been previously paid by him.

The second case is not, strictly speaking, a case of enhancement, but of the application of approved rates to the area correctly ascertained to be subject to them. Broadly, after the Table of Rates had once been sanctioned, the zamíndár (except where certain improvements, as we shall presently explain, might be effected) could only enhance his rents by enforcing the authoritative rates. The Collector's Table would itself declare the prevailing rates, and in the rectification of such rates (which is intended), any increase in the productive powers of the land or in prices would be taken into account. The first, third, and fourth grounds of enhancement, as set out in section 23, would therefore be superseded.

Proceedings to enforce the Collector's rates in the Civil Courts.

71. The Civil Court would be bound to apply the Collector's rates, unless the raiyat could prove that he was entitled by custom or contract, or special equitable considerations, to hold at lower or more favourable rates. It is not provided in section 133 of the Bill that the Table shall contain particulars as to the rates payable by different classes of occupancy-raiyats. In Bengal such classes would rarely be recognised or numerous; but where they were so, it would be an advantage if the Table could include this detail. In other cases, it might be left to judicial inquiry. The raiyat would always have the opportunity of showing, under section 142, that he was the descendant of a first settler, or of a holder at the time of the Permanent Settlement, or any like circumstance which might entitle him to some customary deduction. Similarly, if he could prove that his field was, from any special cause, below the average of the class of land in which it would fall under the ordinary application of the Table, he would be entitled on this ground, to an equitable reduction of the rate assigned to such class in the assessment. Either zamíndár or raiyat could plead that the productive powers of the holding had been increased solely at his expense; and in such case the Court would apply the appropriate rates, which would be specified in the Table. The Court would further see that no rent was more than doubled; unless, indeed, the suit were brought on the second of the grounds mentioned in the preceding paragraph; the reasons for this exception being, in the case of alluvion, that the rent-paying area would be proportionately increased, and, in the case of unauthorised cultivation of excess lands, that encroachments should not be rewarded. If immediate payment of the enhanced rent would be attended with hardship, the Court would have discretion to direct that the rent should increase yearly by degrees for any number of years, not exceeding five, until the limit of the enhancement allowed had been reached.

Procedure in framing principles of assessment.

72. The rule laid down in section 134 of the Bill that in the preparation of the Table of Rates the Collector shall be guided by the provisions of the Act, and by such rules as the Board of Revenue shall prescribe in that behalf, seems to us to need amplification. Virtually, the Board of Revenue is required to frame principles of assessment in accordance with

Act XXXIII of 1871, sec 9;

Act XIX of 1873, sec. 39; Act XVII of 1876, sec. 15; Bo Act V of 1879, sec. 214 (*d*). Act XVIII of 1881, sec 17.

sections 23 and 24. We would impose this duty upon the Board in express terms; but we would add that the rules drawn up by that authority shall before issue be submitted to the Local Government and sanctioned by the Governor General in Council. The experience of other provinces might thus be brought to the aid of the Local Government in the extensive undertaking which is before it. Much skill and attention would be needed to render these rules at once consistent with the law proposed to be enacted, and sufficiently simple to admit of their practical application without unusual difficulty. The Courts of Justice should not have power to question the accuracy of the rules so framed.

Sections 23 and 24 considered as declaring principles of assessment.

73. Coming now to consider sections 23 and 24 as declaring the principles on which the Tables of Rates are to be prepared, we observe that the rates may be raised in consequence of an increase in the productive powers of the land or of a rise in price. In both cases, it would be necessary to exercise much care in choosing the date of the former condition of the land or of prices, with which the present condition of either would be compared. Manifestly, an intermediate decline of prices or in the productive powers of the land, at some time subsequent to that when the rent was fixed, might make the increase in either appear much greater than it really had been, and this to the serious disadvantage of the raiyat. In the converse case the zamíndár also might suffer. The point of time must therefore be fairly chosen with regard to the interests of both parties, as is intended by the Bill. Doubtless, in the interval before the Tables of Rates were brought into force, the Courts of Justice will not overlook the importance of this matter.

Choice of point of time for comparison.

The Table of Rates should meet certain cases of improvement.

74. It would be difficult, but not, we think, impossible, for the Table of Rates to be so adjusted as to meet cases in which improvements were effected solely by the landlord or solely by the tenant. Some estimate would be made of the total additional value due to the improvement in prices or productive powers, and such total value would be assigned wholly to the landlord or shared equally between him and the tenant, according to circumstances. In the case of lands or prices improved by the zamíndár, the whole additional value (subject to certain limitations) would be added to the rates; where neither zamíndár nor raiyat had brought about the improvement, not more than half such value would be so added Land improved by the raiyat at his sole charge, would be rated as unimproved land.

No excess over double the rent or a quarter of the produce.

75. To the rules that the enhanced rent shall not be more than double the previous rent or more than one-fourth of the average annual value of the gross produce of staple crops, we take no exception. We do not think that either rule would be found to press hardly on improving landlords. The first is a reasonable application of the principle that the general standard of comfort must not be harshly lowered by any sudden and great change in the means of the cultivating classes. Most of the cases in which it might work unfairly to the zamíndárs are eliminated by reason of its being inoperative where the enhancement is claimed on the ground specified in clause (2) of section 23; and we observe that the British Indian Association does not object to it. In framing the rates, its effect would be that no rates more than double the old rates, would be proposed. The limit to 25 per cent. of the gross produce of the staple crops is advocated because it corresponds to the *rebba* or money rental, taken by the Government of the Moguls, and because, one-half being the usual share of the landlord when the rent is taken in kind, one-fourth appears to be a fair proportion when the risk is borne by the tenant. If it were intended that all rents should be adjusted to a produce standard, the theoretic considerations in favour of adopting some share of the net produce as the measure of rent could not be disregarded. But the case differs where the standard sought is not a measure of rent in every instance, but a maximum which no rent shall exceed. In this view a comparatively rough-and-ready rule seems expedient; and that some such rule is needed the experience of Bihár places beyond all doubt. Just as in the Panjáb the land revenue assessment is limited to the equivalent of one sixth of the gross produce, so in Bengal it is proposed that the rental shall not exceed the equivalent of one-fourth. Either in the Panjáb or in Bengal, under the Bill, the revenue or rent, as the case may be, might be fixed at any amount not less than the authorised share of the gross produce, if circumstances required a more lenient assessment. We think the limit of 25 per cent. would be useful to the assessing officers in Bengal; and after the rates had been announced, it would be self-acting, because every rate for every class of soil having been calculated on the principle that the rate should not represent, at the most more than one-fourth of the average annual value of the gross produce of the staple crops, it follows that the total assessment on any holding composed of soils of different classes, could not exceed a fourth of the average annual value of the gross produce of the staple crops which might be cultivated on the soils therein comprised.

Rule of proportion.

76. We feel hesitation about the proposal that the enhanced rent shall not bear a higher proportion to the rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or former prices. Where the increase is not the result of the enterprise of the landlord, such a rule may be very fair. We do not object to it as a temporary provision, in anticipation of the Table of Rates; and in the assessments, we think it might be reasonably followed in those cases where the alteration of prices or productive capacity of the soil was due to no effort on the part of the landlord. But, to take a concrete example, if the gross produce be of the value of Rs. 100 and the rent Rs. 25, and the landlord makes an improvement which raises the value of the produce to Rs. 150, he cannot, under the rule of

proportion, add more than Rs. 12-8 to his rent, though, if he were allowed the full benefit of his improvement, the addition would be Rs. 50. Improvements would therefore be discouraged; and we would avoid such a defect in the law by making it clear that neither the Courts nor the assessing officers need apply the rule of proportion, if, for any reason, it might appear inequitable to do so. After the rates had been announced we do not think that the Courts should be troubled with any rule of proportion. The prohibition against more than doubling the rent, and the limit of a quarter produce would be ample securities against rack-renting, and it would be an unnecessary refinement to require the Courts to enter on questions of proportion which would already have been considered, so far as they ought to be taken into view, when the Collectors' Tables were under preparation.

Progressive rates.

77. In connection with the power of the Court to direct a gradual rise in rent for the purpose of preventing hardship, it might be worth while to consider whether the Table of Rates should not provide for progressive enhancements of another character, to meet the case of lands newly brought under cultivation, so that landlords should be encouraged to promote the extension of tillage by the prospect of a higher rate after a certain term. A. Smith, III, 676.

Limitations of time.

78. Up to this point, we have discussed the limitations upon the amount of any enhancement. We now have to remark on the period of time during which the raiyat should be free from any further increase of rent. It is intended that the table of rates shall have effect for ten years from the date of its publication, and thereafter until a fresh set of rates has been notified. In our opinion ten years would usually be too short a term for the currency of the sub-settlement, especially in long-inhabited and fully-cultivated tracts; and if there were no serious objection, we should greatly prefer the period of thirty years recommended by the Famine Commission. But where rents are at present nominal or exceedingly light, and more particularly where they have been kept low to further reclamation, landlords might justly complain, if, after only doubling such rents now, they were debarred from further enhancement for so long a time as thirty years. Moreover, experience of settlement operations in other provinces has shown that the length of the term of settlement may very properly vary with the different circumstances of particular tracts. We would therefore propose that the Local Government shall be empowered to fix the term during which the Table of Rates shall be maintained, provided that such term shall not be less than ten or more than thirty years. We think also that a landlord, when he has enhanced the rent of an occupancy-tenant, whether through the Courts or otherwise, should not be able, merely on the ground of the issue of a fresh Table of Rates, to claim a further enhancement, until at any rate *a reasonable period* has elapsed since his last enhancement. The precise mode of applying limitation to such claims would be matter for the consideration of the legislature.

Principle as to improvements.

79. These limitations of time might discourage the investment of capital in agricultural improvement, but we would add provisions to prevent their having this effect. It may be quite true that in Bengal, at the present day, improvements are rarely made either by landlord or tenant; but it is a distinct object of our policy to encourage them; and when we are about to put the law of landlord and tenant in Bengal on what we hope may be a permanent footing, we desire, at least, to be very careful to do nothing which may tend to check them. We have borne this principle in mind in discussing the limits of amount imposed upon enhancement.

Improvements effected by the landlord with the tenant's consent.

80. We will suppose the case of a landlord who wishes to lay out Rs. 5,000 for five years in making wells, raising embankments, excavating irrigation cuts, or other similar works, expecting at the same time to receive a reasonable return for the capital so expended. Under the proposals above described, as he could only enhance once in ten, or it might be in thirty years, he must either wait till he has expended the whole of the Rs. 25,000, and thus lose the interest upon the sums first laid out; or, if he enhances upon the first year's expenditure, forego all return to his subsequent outlay until after the lapse of ten or more years. Occupancy-raiyats cannot be allowed to contract themselves out of the legal rates of rent, and thus by multiplying instances of rates above the average, gradually to raise the prevailing rate of the vicinity. To permit them to do so, would lead to collusion between zamíndárs and individual raiyats, and, in course of time, to the prevalence of oppressive rates of rent. But it is desirable to avoid discouraging improvements in cases such as that supposed. Landlords will divert their money to more profitable employment, if they cannot obtain a reasonable return from its investment in their estates. We would therefore enact that whenever a landlord desires to make an improvement of any of the descriptions specified in section 69, he may apply to the Collector for permission to realise, as rent, a fair rate of interest upon the capital so to be laid out; and that the Collector, if he is satisfied, after hearing the landlord and tenant or their representatives, that the application of the landlord has been made in good faith, and that the tenant or, where more than one tenant is affected, the majority of the tenants consent to the proposed improvement, and to the rate or amount of interest claimed by the landlord, shall make an order, specifying the amount of interest to be added to the rent, which amount shall be recoverable, as rent, from such date as the Collector may direct, notwithstanding the currency of any legal term within which enhancement is or may become prohibited in respect to the holding or holdings about to be improved. Provisos would be added that no such amount shall be taken into calculation by any Court, Collector, or local or district Commission when ascertaining the prevailing rate for the purposes of any suit or of framing a Table of Rates under the orders of the Local Government; and that any such amount shall be set off in the tenant's favour if the landlord shall

bring any suit for enhancement of rent on the ground of an increase in the productive powers of the land.

Joint improvements.

81. There is another special case, distinguishable from the above, for which no provision has been made in the Bill; and that is where the productive powers of the land have been increased at the joint expense of landlord and tenant. Such instances would be rare, and though the Tables would specify rates for irrigated or manured or newly-cleared lands, they obviously could not be adjusted to meet the equities of joint expenditure, which could only be ascertained by inquiry into the particulars and history of the holding. This inquiry we would leave to the Courts, even after the Table was published, subject to the rule that the additional value due to the improvement shall be divided between the parties in proportion to their shares in the expenditure by which the improvement was brought about. We make this suggestion much more in pursuance of the principle that there should be no discouragement to joint agricultural improvement, than under any belief that, in practice, the case will often arise. Still, if the parties should ever agree to prosecute joint improvements, each should be assured of an equitable return.

Applications for a complete settlement to be allowed.

82. Although the Collector's assessment would not ordinarily extend to each field, we think that permission might be given to zamíndárs who own estates of considerable size, or to any sufficient number of raiyats, to apply to the Government, either before or after the preparation of a Table of Rates, for a complete settlement of their rents, including maps of the fields and the ascertainment of the amounts payable in respect of each holding. It should be in the discretion of the Government to decline to allow its officers to enter upon such work if for any reason it was inexpedient to do so, and it should be an invariable condition that the persons seeking to procure any such settlement by public agency should defray the whole of the cost.

Enhancement should not be forbidden to temporary lessees in Bihár.

83. Before leaving the subject of enhancement we would remark upon section 84 (applicable only to Bihár), which forbids enhancement by temporary lessees. We admit the gravity of the evils which that section is intended to alleviate; and we have duly weighed the representation of the Bihár officers (as reported by Mr. Reynolds) that enhancement by *thickadárs* must be prohibited at any cost. We are aware that a planter may use the practice or the threat of enhancement as the lever to force the reluctant cultivation of indigo; and that speculators paying down lump sums to landlords who prefer the profit and ease of such transactions to the worry of a direct contest with their raiyats, may unscrupulously exert the authority thus purchased to induce compliance with repeated illegal demands. But we are opposed to class legislation which would deprive a particular set of persons in Bihár of rights generally enjoyed by landlords throughout the country. Our object is to prevent rack-renting in any case; and deeming the rules of the Bill sufficient for this purpose,—so far, at least, as rack-renting is effected through the Courts,—we would strike out section 84 which, at most, could only preclude the *thickadár* from claiming enhancements in due course of law. It is, however, notorious that the *thickadárs* usually procure enhancements without the direct assistance of the law Courts. If our general recommendations are accepted the raiyats will be placed in a much more independent position than heretofore; and *thickadári*, in so far as it is part of the indigo system, will be to some extent discouraged, because greater facilities will exist for direct relations between the raiyats and the planters, and the inducements which lead the latter to purchase zamíndári influence, will lose some part of their force.

General description of proposed amendments.

84. We do not think it necessary to specify in detail the amendments which should be made in the Bill to meet our views, as explained in the preceeding paragraphs. On the whole we believe that the only important difference of opinion between ourselves and the Bengal Government is that we would take a classification of lands instead of the status of the tenant as the basis on which the recognition of the occupancy-right shall be effected, and would make that recognition general in order that it may be perfectly secure. Following up this proposal as to *raiyatti* lands, we would slightly modify the Bill in regard to *khámár* or private lands. We think the Local Government should be empowered to fix the term during which the Table of Rates shall be maintained at not less than ten or more than thirty years. It would be an advantage if the law were more clearly to distinguish the different purposes and circumstances for and under which sections 23 and 24 will be brought into play, and if it were to state more explicity the consequences of publishing a Table of Rates. The rules of assessment, framed by the Board of Revenue, should, we consider, be submitted for our sanction; and we have made some fresh suggestions in regard to the rule of proportion and progressive rates. We would add a clause giving a ten years' currency to any enhancement obtained before a Table of Rates can be enforced; and we would guard this and every other restriction of time by enabling landlords to obtain a fair interest on capital laid out in improving their properties. We would provide for the cases of joint improvement, and of landlords or tenants desiring to obtain complete settlements at their own cost. Section 84, prohibiting enhancement by temporary lessees, we would omit. It is not, however, our present duty to submit a revised Bill. We confine ourselves to formulating our recommendations, on the understanding that if they are approved effect will be given to them in the next draft of the measure.

Avoidance of contract a necessity.

85. Nor need we dwell on section 20 of the Bill, which provides that no contract whether entered into before or after the commencement of the enactment, shall in any case debar a raiyat from acquiring a right of occupancy in *raiyatti* lands used for agricultural purposes. Such is the power of the zamíndárs; so numerous and effective are the means possessed by most of them for inducing the

raiyats to accept agreements, which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy; that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed: and in this conclusion we have the support, not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers.

Incidents of the occupancy-right.

86. After the claim to hold at the legal rent, the most important incidents proposed to be annexed to the occupancy-right are transferability and the power of sub-letting. We shall confine our remarks to transfers which may be the consequence of default in the payment of rent, or otherwise due to a sale in execution of a decree, or which may be the result of private agreement, taking, in the latter case, the form either of sale or mortgage.

Objection to the patní sale procedure.

87. In section 148 of the Bill it is proposed to empower the Lieutenant-Governor, on the recommendation of the Board of Revenue, to render the *patní* sale procedure applicable to certain occupancy-holdings. The effect would be that these holdings could be summarily sold for arrears of rent on the application of the landlord and without decree. Notice of the arrear claimed would be given at the Collector's Court, at the zamíndár's place of business, and at the village of the defaulter; and a raiyat contesting the demand might apply for a summary investigation within the period of delay, but if the case were still pending, the sale would nevertheless proceed. The responsibility for the service of the notice would rest with the zamíndár; and the functions of the Collector would be merely mechanical. The authority to bring occupancy-holdings to sale in this manner would be conferred on landlords who maintained a proper system of accounts and registration and duly furnished their tenants with receipts and statements of account. Clearly if the accounts were open to suspicion, or if the zamíndár and his dependants could not be trusted honestly to serve the notices which they would profess to prove, this procedure, when applied to raiyats' holdings, might work very serious injustice. But, assuming that the Board of Revenue would always be right in its estimate of the accuracy of the accounts and the character of the landlord, we still entertain a strong objection to conferring special powers of coercion upon individual zamíndárs. The distinction made in favour of the landholders thus authorised summarily to evict their tenants would be highly invidious. The provision has not been locally criticised; and we are glad to perceive that the Lieutenant-Governor, recognising some of the objections to which it is open, has not given it more than a provisional support. In effect, it offers a bribe to the zamíndárs in the shape of exceptional means of coercing their raiyats to induce them to maintain regular accounts—a duty which they are already bound to fulfil. For these reasons we are decidedly of opinion that section 148 should be omitted.

Sale in execution of decree

88. Under the Bill, the ordinary process for the recovery of rent would be the modified system of distraint provided for in Chapter XIV. But if the landlord brought a suit for arrears,—and he could sue for a three years' balance, though he could not distrain for rent due for more than one year,—he would be compelled, in the execution of his decree, to proceed at once to the sale of the holding. Sale, we think, is an appropriate substitute for ejectment, because the raiyat will receive (under section 233, clause (4), the balance of the amount realised after satisfaction of the landlord's claims, and thus will obtain the value of his interest, including compensation for any improvements which he may have effected. We have considered the question whether sale should be deferred by transferring the management of the land to the Collector, as can be arranged under the Code of Civil Procedure and as is recommended by the Famine Commission in regard to the small properties of villagers elsewhere. The suggestion seems impracticable because the agency and system of administration existing in Bengal would preclude the possibility of such work being undertaken by the Collectors. With these remarks, we concur in the proposals of the Bengal Government respecting the sale of occupancy-holdings in execution of decrees.

Compensation for tenants' improvements.

89. We have already expressed our views on the question of improvements made by landlords; and, in connection with the matter of eviction by means of execution sale, we may here digress to notice the effect of the Bill on the claims of tenants to compensation. Putting aside tenants under written leases for terms certain, tenants are divided into two classes, those with and those without a right of occupancy. Where the occupancy-tenant is practically evicted by Court sale, he obtains, as we have shown, the value of his improvements, always supposing that the price realised is the true market price of the land. But under section 21 (*e*) cases may occur in which an occupancy-raiyat would be ejected for the breach of certain stipulations; and raiyats without occupancy-rights may be dispossessed by notice to quit served at a particular time of year, and followed by a suit for ejectment. Under section 69, all tenants are authorised to make *bonâ fide* improvements of specified kinds without the landlord's consent. But we do not find in the Bill any provisions other than those relating to Court sale, which would secure the tenant compensation for his improvements when he is otherwise dispossessed. We think such provisions should be introduced, and that they should apply to both classes of tenants. Sections 44 to 47 of the North-Western Provinces Rent Act, No. XII of 1881, might be generally followed, so that the compensation should take the form of a payment in money or a rent charged on the land or the grant of a beneficial lease, or any one or more of these forms; and so that the Revenue authorities should be empowered to adjudicate in cases of difference as to the amount or value of the compensation tendered. We would further amend

clause (*e*) of section 21 by an adaptation of the language of section 14 of the Conveyancing and Law of Property Act, 1881. On the breach of a stipulation entitling the landlord to eject, he should be required to serve a notice on the raiyat specifying the particular breach complained of, and, if the breach were capable of remedy, calling on the raiyat to remedy it, and, in any case, to make compensation in money on account of it. The right of ejectment would then be enforceable only if the raiyat failed within a reasonable time after the service of the notice to remedy the breach, if it could be remedied, or to make reasonable money compensation.

Private sale and mortgage.

90. Returning from this short digression, we come to the subject of transfer, by private sale and mortgage. Here our conclusions are that the landlord should have a right of pre-emption in all cases whether of sale or foreclosure; that it is undesirable that the occupancy-holdings should pass into the hands of the money-lending classes; and that it would be an advantage if mortgages to such classes could be discouraged or restricted.

See Act VI of 1872, sections 12 to 15, as amended by Act XII of 1878.

The Bill practically gives the landlord a right of pre-emption.

91. The Bill practically confers a right of pre-emption on the landlord, although this is not stated in so many words. Clause (*b*) of section 21 enables the occupancy-raiyat to transfer his holding by private sale, and states that the consent of the landlord shall not be necessary to the validity of any such transfer. But this clause must be read as though it were subject to a proviso referring to a clause (3) of section 19 and to sections 38 and 41. The intention of the first of these provisions is that, after transfer by private sale, or sale in execution of a decree, the incoming raiyat (if an outsider or non-resident-raiyat) shall not acquire the occupancy-right except with the landlord's consent. Failing such consent, the new tenant would be merely a tenant-at-will or (more correctly) an unprivileged raiyat under Chapter IV. Sections 38 and 41, relating both to transfers by one resident-raiyat to another, and to transfers by resident raiyats to other raiyats not possessing the status of residency, are apparently restricted to transfers other than transfers by sale in execution of a decree, and do not apply to mortgages, because transfers by mortgage are not included in the definition of 'transfer' contained in section 37. The parties to the transaction are obliged to apply for its registration in the Rent Office of the zamíndár; and if they do not do so, the latter may treat the transferor as still liable for the rent, at least for a period of six months. On application, the zamíndár may refuse to register, may pay the vendor the price agreed upon, and may take possession of the holding as unoccupied *raiyatti* land. To prevent collusion as to the price fixed for the holding, the landlord is allowed to apply to a Civil Court to determine the reasonable price which should be paid. Under section 46 in certain cases, which would be very numerous, the acceptance of rent from the purchaser is to be deemed to be equivalent to registration; the landlord could therefore ignore the transfer till rent was tendered by the incoming tenant, the right of pre-emption arising when the tender was made.

Landlord's right of pre-emption should be declared in express terms.

92. To the principle of these rules we take no exception. We think that, the rights of present settled raiyats being maintained, the landlord is fully entitled to choose his tenants in all cases of transfer, and that the right of pre-emption will sufficiently enable him to guard his interests in this respect. But we are of opinion that effect might be given by a more direct method to the intention of the Lieutenant-Governor. We would therefore declare that in all cases of the transfer of occupancy-holdings in *raiyatti* land, whether by private sale or by sale in execution of decree, or by foreclosure, the landlord shall have a right of pre-emption; that in cases of private sale or foreclosure he may, if necessary, apply to the Civil Court to fix a fair price, or the amount of the mortgage debt; and that his purchase or redemption shall result in the land being placed at his disposal as unoccupied *raiyatti* land.

Transfer: its consequences to the raiyat.

93. So far we have considered the landlord's interest; but the protection of the raiyat is a matter of much greater difficulty. The money-lender by means of a mortgage might appropriate the whole profits of the holding; or by foreclosure or purchase he might become possessed of the occupancy-right, making a sub-lease to a cultivator; or the occupancy-raiyat of to-day, finding his interest profitable, might gradually disuse cultivation, sub-letting the land to an under-raiyat at an exorbitant rent. In all these cases the actual cultivation of the soil would, unless provision be made to the contrary, tend to fall into the hands of a rack-rented peasantry, the fruit of whose labours might be reaped by speculators or absentees, or mere annuitants, idly consuming the agricultural yield in unproductive expenditure. A generation hence, it may be said, present circumstances will repeat themselves; the present settled raiyats will have become, to all intents and purposes, tenure-holders, or they will have parted with their rights in favour of non-agriculturists; and the Government will again be moved to interfere for the protection of new masses of peasant occupants against practical seldom and oppression.

Reservation of power to correct such consequences, if injurious.

94. We agree with the Lieutenant-Governor that any general prohibition, either of the mortgage or of the sub-lease of the holding, would be inoperative. We admit, therefore, that some of these consequences cannot be altogether prevented; but we desire to minimise their range and effect. They may be brought about in two different ways; that is, either through the direct transfer of the old holding by sale or mortgage to a non-agriculturist, or, the holding being retained by the original settled raiyat or his representative, by the conversion of cultivators and peasants into petty landlords living on their rents. The first process has produced, in many parts of the country, evils against which we would take al

possible precaution. That in course of time the second process will be in operation is, we think, no conclusive objection to the principle of the Bill. The probability assumes the passage of the present generation of raiyats through a period of prosperity; and the assurance of a position of comfort if not of industry to their successors in interest. The Famine Commission, in advocating the extension of occupancy-rights, contemplates the eventual transfer of such rights to the actual cultivator if the original holder becomes divorced from the soil; and considers that the Rent Courts could decide whether an occupancy-tenant had ceased to be an habitual cultivator. Whether rights are re-adjusted by the Courts under a special law or by express legislative provision, the principle is the same; and we would merely say now that nothing at present proposed to be enacted will deprive the legislature of its power of interposition to prevent the growth of a pauperised cottier class, if, in future, there is any serious sign of this danger. We would, however, do our best to retard any such development. Should it occur, the terms of section 8 of Regulation I of 1793, already cited, are amply wide enough to support the most effective intervention. Our authority to protect, not only dependent taluqdárs and raiyats, but *all other cultivators of the soil* is unimpeachable; and we would unmistakeably assert that such authority is not exhausted on the present occasion, and that the Government reserves its liberty to repeat, at any future date, measures of protection similar to those which are now proposed.

Expedients for retarding injurious consequences. Checks on sub-letting.

95. The expedients for retarding the consequences which we desire as much as possible to obviate, must necessarily be so devised as to hinder in some degree the operation of the principal causes which will produce them; namely, as we have shown above, transfer and sub-letting. In order to discourage sub-letting, the Lieutenant-Governor proposes to lay down in section 71, that no occupancy-raiyat may sub-let his holding without the consent of the landlord. If, however, such raiyat does sub-let without such consent, the demise will be valid, but the landlord will still be entitled to distrain. By section 30 the money-rent of the under-raiyats is limited to 35 per cent. of the average annual value of the gross produce. In most cases the sub-lease would be a customary *metayer* arrangement by which the crop would be shared in equal proportions between the raiyat and the under-raiyat, known as a *korfa* or *bhag-jotdar*. Here the law would not interfere. The limit of 35 per cent. of the gross produce would be applicable only to money-rents; and until a Table of Rates for occupancy-holdings had been prepared it might not always be easy to measure the rent against this standard. We would accept this difficulty as an inevitable and temporary one. We think it worth while to impose such a limit on money-rents, because so far as it was operative, it would tend to preserve the actual cultivators from rack-renting and impoverishment. The Table of Rates, when framed, would specify the amount of the gross produce of the land of each class and the annual value thereof. As the Bill stands, these particulars would only be authoritative in regard to the rents of occupancy raiyats. We would extend their application to the rents of *korfas* and *bhag-jotdars* when paid in money. The amount and value of the gross produce declared in the Table of Rates would therefore be conclusive in suits brought to recover money-rents under section 30. The Courts would thus be relieved of the necessity of local investigation, as they would find in the Table of Rates the needful data on which to base their decisions. With this modification we support the Lieutenant Governor's proposals on the subject of sub-letting by occupancy raiyats.

Checks on transfer. Proposal of the Lieutenant-Governor.

96. The intention of the Lieutenant-Governor is to allow mortgages, but to restrict permanent transfers of the occupancy right to persons of the raiyat class. It is thought that the definition of raiyát and the provisions of clause (3) of section 19 will prevent any non-agriculturist, such as a money-lender, from acquiring the occupancy-right unless he becomes a raiyat. But the definition of raiyat includes a person who holds land for the purpose of cultivating it; and a person is said to cultivate land when the cultivation is carried on in different ways, and, amongst others, when it is conducted by persons to whom the raiyat has sub-let. It thus appears to us that the money-lender, so far as the definition of raiyat is concerned, would be able to acquire the occupancy-right without difficulty, and to sub-let the holding to the original resident raiyat or to any other cultivator. It is true that under section 19. clause (3), he would have to obtain the landlord's consent to the continuance of the right of occupancy. But this obstacle, though it might reduce the value of what the money-lender could acquire, would not prevent him from ousting the settled raiyat.

Proposal of this Government.

97. Turning to the evidence, and the various proposals made in connection with the transfer of holdings to money-lenders, we find it said in the Report of the Bihár Committee (but disputed by some of the Native members) that in Shahábád and other parts of Bihár, where occupancy rights are at present transferred by sale, the effect has not been to throw the lands of the raiyats into the hands of the *mahájans* or other moneyed men. Nevertheless a majority of the Committee considered that occupancy rights should not be rendered transferable by sale. The Rent Law Commission proposed to allow sale, but to prohibit mortgage, deeming that this plan would obviate the danger of *mahájans* becoming the owners of occupancy holdings, while the former raiyats would remain on the land in a degraded condition of serfage. There is testimony from the Eastern Districts to suggest that in that part of Bengal the risk of the raiyat sinking to a state of serfdom is inappreciable. Thus the Commissioner of the Chittagong Division writes: "In Dinajpur and in this Division, in fact, I believe, throughout Eastern Bengal, the raiyat who is in need of money does not, as a rule, have recourse to the traditional money-lender, in whose clutches he

Bábú Harbans Sahai, II, 286. Bábú Joy Prakash Lall, II, 287. II, 253. Report, para 32.

Lewis, III, 476.

becomes so involved as to cease to be a free man. On the contrary, help is obtained from some fellow-villagers of substance, and such debts are repaid without reducing the borrower to absolute want." Bábú Parbati Churn Roy has, in the course of his duties, seen a great deal of the raiyats of Eastern Bengal, and he would impose no restriction on their power of dealing with their rights. Mr. Westmacott believes that the richer raiyats generally find capital for their poorer neighbours, and his experience of the raiyats in Northern and Eastern Bengal is that most of them are too prudent to require protection against the money-lender. The general sense of the other opinions seems to be that if the prohibition of mortgage proposed by the Rent Commission were effectual, there would be some hardship to the raiyat who, in bad seasons, would be forced to sell his holding outright; while if it were not effectual, it would at least operate to make the raiyat's credit worse, and the terms on which he would obtain loans more onerous. Several of the Bihár officers and Mr. Reynolds, after his conference at Bankipur, supported the proposal of the Rent Commissioners. On the whole, as in the case of occupancy right, we would here also seek to attain our object by the directest course. Saving all rights already vested, we would enact that no person who is not an agriculturist shall hereafter acquire a right of occupancy in *raiyatti* land either by purchase or gift, or devise or foreclosure, or in any other manner whatsoever. The raiyat would then be able to transfer freely to other raiyats, whether by mortgage or sale. But no mere money-lender could acquire the right, though he could advance money on the security of the crop or of the holding, and might bring the latter to sale, subject to the condition that no one but an agriculturist could purchase it. These provisions would be guarded so as not to interfere with the landlord's right of pre-emption. We advocate them with regret as restrictions needed in an immature state of society, where the poor and ignorant are apt to fall into the hands of people possessing the discretion to accumulate property but unable to resist temptations to exaction. As education and the consequent power of self-protection spread, such exceptional legislation would grow obsolete. We therefore think that the Lieutenant-Governor should be empowered to withdraw the above-mentioned provisions, in any district where it might be established to his satisfaction that absolute freedom of transfer would be unattended by any risks. The proposal put forward in this paragraph would be consistent with the suggestions made above for the determination of the class which is to possess the right of occupancy.

III, 622-3.

III, 906, 910.

Nolan, III, 716. Worsley, III, 731 MacDonnell, III, 738. Reynolds, IV, 384.

Acceptance of Lieutenant-Governor's proposals for the more speedy realisation of certain arrears of rent.

98. The provisions for the more speedy realization of arrears of rent when the rates are undisputed do not require more than a brief notice. As already mentioned, the Rent Law Commissioners recommended the abolition of distraint, but the reports of the district and divisional officers, and the urgent representations of the zamíndárs, led to a general concurrence of authoritative opinion that distraint must, in some shape, and at least for the present, be maintained. We accept the principle of Chapter XIV of the Bill that distraint shall be permitted on application to a Civil Court, and through the agency of an officer thereby deputed. The details of the procedure will be minutely considered when the Bill has been introduced. At the same time we would express the hope that it will not be necessary to retain permanently this portion of the Bill; and that improved administrative arrangements may eventually enable the Government to offer the zamíndárs facilities in collecting their rents which shall not involve the distraint of the produce. We concur in the remarks of the Rent Commission as to the general inexpediency of summary methods of judicial investigation; and we think that the abbreviated procedure of Chapter XVIII goes as far as it is prudent to proceed in the way of shortening the trial of certain classes of rent cases. Opinions differ as to the value of the abbreviation effected, which is modelled for the most part on the rules of the Small Cause Courts. Probably the most important point is the provision in section 242 that there shall be no appeal from the decisions of specially empowered officers in suits for arrears of rent when the amount claimed does not exceed Rs. 50. We consider that Chapter XVIII is at least worth a trial. Experience will soon show how far it tends to prevent the undue prolongation of rent suits.

I, 77.

Report, II, page 119, para 28

Remissions and suspensions of rent in certain cases.

99. In the opinion of the Famine Commission, when a tenant is sued for an arrear, the Rent Courts ought to be able to decide "whether he is entitled by reason of some calamity of season, such as is recognised in the case of a landlord as a justification for a suspension of land revenue, to have the arrear suspended till the next crop is harvested." Much correspondence has passed between our Government and that of the North-Western Provinces and Oudh on the closely connected question of the independence between remissions and suspensions of land revenue and remissions and suspensions of rent. It was originally provided that a remission or suspension of rent should draw with it the obligatory relaxation of the land revenue demand; but finally, the converse rule was enacted in section 23 of Act XII of 1881, under which it is open to the Local Government, where it remits or suspends land revenue, to empower an officer to direct a proportionate remission or suspension of rent in the tract affected by calamity. Remissions and suspensions of land revenue are exceedingly rare in Bengal, but they are sometimes allowed, particularly in the eastern deltaic districts which are exposed to storm-waves and tidal inundations. We would therefore at least provide, on the principle of section 23 of the North-Western Provinces Act, that whenever the land revenue is remitted or suspended in Bengal, either the Rent Court or, if necessary, a special officer, shall have power to remit or suspend the rental in proportion. We fear that if we were to adopt the proposal of the Famine Commission, the Bengal officials would be led into local inquiries which they would not now have the means of conducting with success.

100. But by far the most important proposals made by the Famine Commission, in connection with the relations of landlord and tenant in Bengal, are that a general field survey shall be undertaken, and that the system of village records and accounts shall be introduced. As we have already implied, we give our general support to these proposals. Where local officers possess a full and accurate knowledge of local facts, and where they are therefore able to pursue a vigorous method of administration, these advantages are very commonly due to their being supplied with information reaching to the detail of every field, and to the existence of numerous and disciplined bodies of subordinate native officials, who are able to collect the various particulars within their cognisance as materials to suggest fairly safe generalisations. With the view of preventing or detecting famine or scarcity, of alleviating distress, and of securing agricultural efficiency, we have pressed upon all Local Governments the institution, or continued improvement, in the several provinces, of local organisations for agricultural inquiry, extending, if possible, to all parts of each district. Whether we have regard to the prevention of famine, or to the waste of life or waste of money which may directly result from official ignorance or uncertainty as to the approach, or dimensions of famine; whether we look to the need for active administration which shall search out and expose deep-seated evils, or to the lack of some solid assurance that facts affecting agricultural interests shall be so notorious and indisputable that none shall be able to pervert them to the injury of the weak, we perceive, in the circumstances of many portions of Bengal, and particularly of Bihár, strong reasons for placing the Bengal officials on a level, in point of administrative advantages, with their brother-officers in other provinces. If it be said that in temporarily-settled territories the Government has a pecuniary interest in an intimate acquaintance with the agricultural resources of the country, which is absent where the revenue has been permanently fixed, we reply that we have an interest, not of a pecuniary kind, but of a more important description, in the well-being of the agricultural population. In urging upon the Local Governments the system of agricultural inquiry recommended by the Famine Commission, our only objects connected with the land revenue assessments were to lessen the expense and vexation of re-settlements, and to prevent the hard or uneven pressure of taxation upon the cultivating communities. Our chief desire was, and is, that our officers shall understand the rural economy of their districts, in order that they may be properly equipped for their frequent contests with calamity or wrong. We have been seeking no fiscal advantage but the prevention or diminution of human suffering.

Proposal for a general field survey and record-of-rights.

Report, Part II, page 121, para. 34.

101. Thus the general motives which would lead to the introduction of systematic agricultural inquiry in parts of India where it is not at present organised, lose little, if any, of their force in Bengal by reason of the Permanent Settlement. There are, however, special circumstances, prominent in the present discussions, which seem to us to render this administrative improvement particularly necessary in the Lower Provinces. Nowhere are the condition of the tenantry and their relations with the landlords questions of so great complexity; nowhere have they a more important bearing upon the public welfare. The land question, it will be admitted, is the great administrative problem in Bengal. Yet nowhere is the Government at a greater disadvantage in considering it. To introduce a system of village records in such form as may be best suited to the circumstances of Bengal would be to improve local knowledge, and to enable the Collectors more effectively to examine and deal with the various interests and difficulties arising out of the relations of landlord and tenant.

Which would improve local knowledge:

102. But the great advantage would be that this system, supplementing the operation of the Bill, would bring to an end the uncertainty which now prevails on all points touching the status and rental of the tenantry. "The withholding of receipts," writes the Collector of Faríd pur, "is as nothing compared with the evil attending land being held and leased without any reliable record. Half the murders and riots of Eastern Bengal, if not more, are to be laid to this door, as also the chronic opposition of landlord and tenant." The law has always directed or encouraged the interchange of *pattás* and *kabúliyats;* but it may often be the interest both of landlord and tenant, and still more of the zamíndárí *amla* or dependants, that the true facts shall be studiously obscured. The tenant may dislike accepting a document which he might regard as derogating from rights antecedently claimed; both landlord and tenant might prefer indefiniteness as giving either some chance of unjust advantage over the other; if the tenantry not only knew but were able to prove their rights, the power of the *amla,* resting on their means of producing and concocting evidence, would be undermined. Mr. Nolan states:—

End the uncertainty which promotes rent disputes:

III, 611.

III, 914-15

"I have been struck during the course of my service in different d stricts in Bengal, Bihár, and Orissa by the uniformity of the disputes which everywhere more or less prevail between landlords and tenants. In all the evidence is of the same type; on the one side are produced the zamíndári accounts, showing, if they are to be trusted, that the raiyats have in fact given their consent by paying at the enhanced rates; on the other are put forward verbal denials and criticisms of the accounts. In some cases the accounts have been proved to have been elaborate forgeries. * * * * The commonest, almost the universal, defence is that the demand for rent is greater than what is due. The landlord supports his plaint by the evidence of men of the lowest character for veracity, and by accounts kept by these men in the loosest fashion. The raiyat repties that the witnesses are perjured and the accounts are forged. In many cases within my knowledge it has been clearly proved that the suits brought were supported by accounts fraudulently kept for years, with the intention of proving the rent to be higher than it was in reality, and these cases are typical. This is nowhere more true than in Bihár."

III, 724-25.

Mr. E. Currie, in the Statement of Objects and Reasons annexed to the Bill, which afterwards

became Act X of 1859, observed: "To refer a poor cultivator to a regular suit, under the present practice of the Courts, is almost tantamount to refusing him any remedy at all." We much fear that there are parts of Bengal, more especially in Bihár, where this remark is still no less true than when it was written; and the reason is that the documentary evidence on which the Court must mainly rely is in the custody of the zamíndár's dependants, whose oral testimony, moreover, can rarely be properly checked. The village-record system would wrest the evidence on which rent suits depend from the hands of those who are interested in falsifying it.

And efficiently protect the raiyats.

103. It is not enough to recognise the valuable rights possessed by the raiyat. He must also be enabled to prove them. We believe that the Bill would effect much; but, if we are to have the absolute security which we desire to obtain, that it shall not miss its mark, its intention must be carried out by executive and administrative arrangements in the interior of the districts. Generally to affirm and strengthen the occupancy-right will not put an end to the evil of the zamíndárí accounts; nor will it help individual raiyats to establish their claims to particular plots, when those claims are contested. In one paper Mr. Reynolds states that the right of eviction is never exercised in the Eastern Districts; in another he quotes opinions to the effect that exemption from eviction would be a worthless boon in Bihár, where raiyats are hardly ever evicted because the new tenant could not possibly pay more than the old one. Yet we gather that both in the Eastern Districts and in Bihár, rent suits of the character described by Mr. Nolan are, or have till lately been, common. The Collector's Tables of Rates will doubtless clear away many difficulties; but if the rates are known the zamíndár's *amla* will alter the measurements, confuse the record or evidence of classes of soil and size of holdings, and by these and other devices, and by continuing the levy of illegal demands, force the raiyats to pay more than the legal rent. We have considered the provisions of the Bill regarding registration and rent receipts and statements of account; and we think that all the measures proposed in regard to those matters are insufficient to eradicate the mischief which we desire to destroy. They do not establish an independent agricultural record with which neither zamíndár nor zamíndárí *amla* could tamper. Till that is done the weaker peasantry will never be safe from oppression.

III, 1,010.
IV, 377

Bearing of experience in the permanently-settled districts of the North-West Provinces on this proposal.

104. Concurring, then, with Sir Henry Ricketts, Sir George Campbell, the Famine Commission and other authorities, we are of opinion that the question whether a field survey shall be made and a record-of-rights framed throughout Bengal should now be taken up in communication with the Local Government. This work will take many years to accomplish, and we think it should be begun in the Patna Division, where the need for protecting the cultivators is most pressing. In the adjoining permanently-settled districts of the North-Western Provinces a cadastral survey and a revision of the record-of-rights are now in progress. We therefore caused inquiries to be made for the purpose of ascertaining what experience might have been gathered in Gházipur, Mirzápur, Jaunpur, and Benares, which might assist us in forming conclusions upon the treatment of the rent question in Bihár. We enclose the reports which we have received from the Government of the North-Western Provinces. They show that the *patwárí* or village accountant's cess was accepted by the proprietors in the permanently settled districts without objection; that the *patwáris* are on the same footing in the permanently-settled as in the temporarily-settled districts of the North-Western Provinces; that the present operations extend to the record of all rights in land whatsoever; that even an imperfect record-of-rights may be a source of great strength and stability to the tenants' interests; that the zamíndárs do not resent the present proceedings or official intervention in village accounts as undue inquisition into their private affairs; and that there is practically no anology between the state of things in Bihár (the Shahábád District, being excepted) and the state of things in the Gházipur District, where a record-of-rights has been in existence for 40 years There is, indeed, quarrelling about boundaries and *sír* lands. But the Collector speaks of the record prepared in 1840-41 as having been "the salvation of the tenants' rights;" and the characteristic evils of Bihár, the insecurity of the raiyat, the changing of fields or alteration of field records, the excessive enhancement of rents, and the prevalence of *thikadari* and of illegal distraint, are absent. The Gházipur tenant may be litigious; but it does not appear that he is oppressed. All the evils in Bihár spring from the weakness of the tenantry; and nothing, not even broad legislative declarations of their occupancy-rights, or Collector's assessments of rent rates, will do so much to establish the raiyats in a strong position, able to resist aggression, as the independent record of the fields to which each individual is entitled, and of the exact amount which he is required to pay annually in respect of them. If Your Lordship sees no objection to the early introduction of field survey, the formation of a record-of-rights, and the re-establishment of the system of village records and accounts on a revised footing in the Patna Division, we shall place ourselves in communication with the Government of Bengal with the view of maturing the details of a scheme for these purposes. We may add that a professional cadastral survey would probably be unnecessary, and that some less costly method of measurement, conducted after the manner of settlement measurements in parts of Northern India, would probably effect all that is required.

Summary of arguments.

105. As this despatch has extended to a considerable length, we may now conveniently summarise our arguments and proposals. Soon after the enactment of the Rent Law of 1859, its working began to be attended by difficulties which the decisions of the Courts of Justice failed to overcome. From different causes, the relations of landlord and tenant have long been on an unsatisfactory

footing in Orissa, Bengal Proper and Bihár. Projects of legislation have had a different origin in Bihár and Lower Bengal, respectively; but two separate Committees simultaneously represented that the whole law ought to be re-cast. We have accepted this conclusion, and have supported the main principles of Sir Ashley Eden's Bill as being just and expedient in themselves, and consistent with the ancient customs of the country and the Regulations of the Permanent Settlement. Further, Act X of 1859, instead of being, as supposed, an exhaustive Act, laying down clearly and finally the rights and interests of all classes interested in the land, has now been declared by the High Court not to override or prevent the operation of custom where this is not directly abrogated by it. This being so, the raiyats of Bengal may now be held to be in possession of every right that has not been actually taken away from them by our legislation. Under the old Regulations they were entitled to the practical benefits usually attaching to rights of occupancy; and those who are entitled to occupancy-rights by custom, though they cannot, indeed, prove them under the present law, have not been deprived of them merely because they were partly conferred upon and partly recognised in a class differently determined by a new statutory definition. It is also the fact that throughout the greater portion of Bengal the custom of the country makes no difference as regards rates of rent between resident and non-resident raiyats. Thus in going behind the twelve years' rule, we are not reverting, as some allege, to a state of things which has not existed for eighty or ninety years. On the contrary, we are affirming a state of things admitted to exist in 1859, still, on our interpretation of law and custom, constructively in existence, and, as a matter of fact, now widely obtaining in practice where the mass of the people is prosperous and strong. We are rescuing, in all parts of the country, the class of true occupancy-raiyats from the false position into which it has been forced by comparatively recent legislation; and we are preventing attempts to contract it under the unexpected operation of a law which was intended both for its benefit and that of a large less privileged class besides. On the other hand, we would maintain the zamíndárs in the novel right of enhancement with reference to the direct increase in the value of produce which they never had before 1859; and we wish to facilitate the exercise of this right, of which, by their own admission, they cannot now effectually avail themselves, owing, again, to defects in the present law.

1, 2. *supra*, para. 18.

Finally, we think that if the general revision of the law now contemplated is to produce its full effect, it must be followed up by executive measures (desirable also on other grounds), designed to end the uncertainties to which rent disputes are mainly due, and, by the local ascertainment and independent record of subordinate rights, to set the raiyats, once for all, beyond the reach of oppression.

Former condition of the raiyats.

106. Depending on these arguments, we would nevertheless guard ourselves from the charge that we are ignoring the losses and gains of a better part of a century. Unfortunately, it is only too certain that, for a long series of years, the rights of the raiyats were, in practice, diminished or ignored or crushed. Twenty years after the Permanent Settlement it was known that the classs of "village proprietors"—the resident raiyats of Bengal—was "in a train of annihilation." In 1819 the Court of Directors owned with regret "the absolute subjection of the cultivators of the soil to the discretion of the zamíndárs." In 1827, the Senior Judge of the Sadr Díwání Adálat recorded that "in many parts of the country the resident cultivators are the actual slaves of the landholders and liable to be mortgaged, bartered or let to hire, the same as his oxen and his goats, at his will and pleasure." The more cautiously worded evidence of Mr. Holt Mackenzie in 1832 confirms the impression that, except in a few districts, the rights of the raiyats had then been reduced to a minimum. In 1841 and 1845 sale laws were enacted which, according to high authority (though the opinion is disputed), gave purchasers power to eject resident raiyats whose tenures were created after the Permanent Settlement and to assess them, if not ejected, at discretion. In fact, two principles, antagonistic to the interests of the raiyats, were frequently at work, operating with varying force at different periods, but each, when it took effect, tending to promote a disregard of the restrictions which law and justice had intended to impose upon superior proprietary power. The principle of non-intervention between zamíndár and raiyat was by turns asserted or repudiated; but it must unquestionably have fastened on the minds of the local officers, prepared, by the associations of language and training, to accept it without demur. The other principle was that the zamíndár must be supported in his demands upon his raiyats, because, under the revenue sale laws, his land revenue must be paid on pain of forfeiture of his estate. Thus it was that zamíndárs became invested with the powers of private destraint and private summons which they notoriously abused; while the officers of the Government, who should rightfully have engaged in the defence of the villagers, were disarmed by an erroneous theory.

Lord Moira's Revenue Minute, dated 21st September, 1815, paras. 138 to 146. Revenue letter to Bengal, dated 15th January, 1819, paras. 22 ff. Bengal Revenue Consultations, dated 8th March, 1827. Trevor, Loch, Bayley, Jackson, Glover, J.J., in the Great Rent Case, pages 9 and 15. Lord Moira's Minute, 1815, para. 139. Letter of Board of Directors, 1819, para. 39. Revenue letter of Bengal Government, dated 1st August, 1822, para. 107. Lord W. Bentinck, 1833, *vide* III, 689. O'Kinealy II, 450.

Value of Act X of 1859.

107. To this day, where wealth has not been accumulated by the development of trade, and where the legislation of 1859 has not penetrated below the surface of society, the raiyats are still exposed to many oppressions, such as those which have been reported from Bihár. We have no doubt that the state of things still, to some extent, surviving in that province, was, in past times, common in very many parts of Bengal. In the Eastern Districts the position has now been almost reversed by the growing prosperity and enlightenment of the people, by the passing of Act X of 1859, and by the decision in the Great Rent Case, so that there it is rather in behalf of the landlords who need help to obtain their dues, than of any raiyats requiring protection, that we must again resort to the Legislature. And here we would say, very emphatically, that Act X of 1859, notwithstanding its failure, as we think, in some very material particulars, was a most valuable instalment of reform, and one worthy of the benevolent intentions of its

authors. The change, for such it is, which we would expedite and complete, has already been partially accomplished. In 1859 the Government resolved to intervene; and we have no other end in view than to carry the work then begun to an effective conclusion. But in so doing, and in order to preserve the spirit of the present law, we are compelled to modify its substance. If, the twelve-years rule being maintained, shifting occupancy under the same landlord were to be counted as continuous occupancy, then such a provision, if retrospective, would have almost as wide an effect as our proposals; while, if it were prospective, many landlords would combine to prevent the accrual of the contemplated rights, and many raiyats, who are now in quiet possession of them, would be ruined. Moreover, experience has shown that the raiyats cannot be safely permitted to contract themselves out of their hereditary rights. We are thus brought to propose important amendments. Doubtless the declaration and strengthening, still more the ultimate record, of the rights of the cultivating classes will check the assumption on the part of the landlords of absolute proprietary powers. But where powers, which the Government, on the best construction of its proceedings and Regulations, never intended to bestow, have been arbitrarily abused by one class acting against another, justice requires that they shall be more precisely defined and limited. To zamíndárs who can no longer exercise feudal compulsion over their raiyats, the legislation which we have proposed will afford many advantages. Nor will its benefits be limited to them. All the landlords will be confirmed in the right to apply a new principle for the enhancement of rent; and all will be afforded new means for procuring legitimate enhancements.

108. Influenced by these views, we have made the following proposals :—

Summary of proposals.

I.—To restore the great body of the raiyats of Bengal to the position which they held under the ancient land law and custom of the country (paragraphs 38-39):

II.—To effect this restoration by declaring that the occupancy-right, carrying with it the privilege of a legal rent, shall attach to all *raiyatti* land, and shall be enjoyed by all settled-raiyats, nomad-raiyats and under-raiyats being excluded (paragraph 62):

III.—To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the *pargana* rates, subject to certain modifications (abstracted in paragraph 84), of which the chief relate to the framing of principles of assessment (paragraph 72), to the securing the benefit of improvements to those who make them (paragraphs 76, 77, 79, 80, 81), to avoiding class restrictions in respect to the enhancement of rent (paragraph 83), and to permitting applications in certain cases, for a complete settlement of estates (paragraph 82):

IV.—To empower the Local Government to maintain the Collectors' Tables of Rates for periods extending from ten to thirty years (paragraph 78):

V.—To declare that no contract shall debar a raiyat from acquiring a right of occupancy in *raiyatti* land (paragraph 85):

VI.—To render the occupancy-right transferable, not, indeed, by summary sale without decree (paragraph 87), but by sale in execution of decree (paragraph 88), and private sale (paragraph 90); subject always to the landlord's right of pre-emption (paragraph 92), and, except where the Local Government shall otherwise direct, to the condition that the right shall not be acquired through any form of permanant transfer, including foreclosure, by any one who is not an agriculturist (paragraph 97):

VII.—Except as above, to impose no restriction on the mortgage of the right (paragraphs 90, 94, 96, 97):

VIII.—To secure to occupancy and other raiyats due compensation for their improvements (paragraph 89):

IX.—To reserve to the Government the fullest power of interposition to prevent the growth of a pauperised cottier class (paragraph 94):

X.—To discourage sub-letting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-raiyats (paragraph 95):

XI.—To provide for the more speedy realisation of arrears of rent when the rates are undisputed by a modified method of distraint, and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal (paragraph 98):

XII.—To authorise remissions or suspensions of rent where there has been a remission or suspension of land revenue (paragraph 99):

XIII.—To take up the question of introducing, throughout Bengal, the system of village records and field surveys, commencing with the Patna Division (paragraphs 100—104).

Reasons for an early decision.

109. In conclusion, we would express our earnest hope that we may be favoured with Your Lordship's instructions in regard to these important matters at the very earliest date which may be consistent with their due consideration. The evils which we have described are of long standing; many of them are of a very serious kind; some, indeed, produce so much injury and suffering that we think certain measures towards their repression should be taken by the legislature even in anticipation of the passing of the Bill. In a separate despatch we shall explain to Your Lordship the few brief provisions which ought, in our opinion, to be immediately enacted in order to aid the executive administration in putting down illegal exaction and illegal distraint by landlords

—provisions which would have a penal character, and would not deal effectively and permanently with the large and pressing questions of the occupancy-right and the systematic regulation of enhancement. Those questions, we think, can only be properly settled by the general scheme of reform proposed in this despatch; and until that scheme has produced its full effect on the country, we fear that it will not be possible to avoid the retention of some penal law directly aimed at grave abuses of proprietary power. The obligation to the people of Bengal which was accepted by this Government in 1793, and again in 1859, has never yet been adequately fulfilled; and our anxiety is great to press on the legislation, now almost matured, which shall effectually discharge it. We are prepared to deal with a question, pending, in point of fact, from the time of the Permanent Settlement, and, at last, owing to the resolute exertions of the Government of Bengal, faced in its full extent and complexity. We earnestly ask Your Lordship to support our resolve that the present opportunity shall not slip by unutilised; and we seek a speedy decision, because, while we know the causes which have prevented earlier action, and fully admit that the Government of India has not till now found itself in a position to enter upon the large reforms which are required, we hold that legislation ought not to be longer deferred.

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No. 54 (Revenue), dated India Office, London, the 17th August, 1882.

*From—Her Majesty's Secretary of State for India,*

*To—The Government of India.*

I HAVE considered in Council your letter of the 21st March last,* transmitting the Report of the Lieutenant-Governor of Bengal upon the proposed amendment of the law of Landlord and Tenant in that Province.

* No. 6 (Revenue).

2. This Report is accompanied by opinions of selected officers, representations of public bodies or associations, reports of local investigations, proceedings and recommendations of special commissions, and other documents of much interest and value. It was upon a very careful and exhaustive consideration of these materials that the Lieutenant-Governor arrived at the views which he has embodied in the draft Bill submitted for your approval. With these views you in the main concur. But there are a few minor points, and one of much importance, on which Your Excellency has come to conclusions not altogether in accord with those expressed by the Government of Bengal. Your reasons for these conclusions you have stated at length in the letter under reply. And, with a full exposition of your own views, you now ask for my instructions in regard to the general principles on which legislation shall proceed.

3. Before considering your proposals in detail, I will briefly advert to the questions discussed in paragraphs 4—37 of your letter, namely, your right to legislate in the proposed direction, and the necessity for such legislation.

4. Without entering upon the debated question of what were the precise intentions of the Government of Lord Cornwallis, I consider it fully established that the reservations made at the time of the Permanent Settlement give you the full right of interposition for the amelioration of the condition of the Bengal peasantry, and that legislative interposition at this time is justified by the facts disclosed—

I.—By the existence of prevalent discontent with some of the provisions of the present law on the part of both zamíndárs and raiyats, which has caused successive Governments of Bengal and of India for some time past to conclude that an amendment of the law is imperative.

II.—By the fact that Act X of 1859 has failed to ensure to the raiyats that security of tenure which it was intended to ensure to them.

III.—By the fact that the Courts have proved unequal to discharge the duty of determining rents thrown upon them by the existing law.

5. Concurring, then, with the view of Your Excellency's Government, and of the Government of Bengal, that an amendment of the present law is necessary, I proceed to communicate to you my opinion on the proposals summarised under thirteen heads in the 108th paragraph of your letter. You will understand that I accede to those proposals which are not noticed.

Mass of the Bengal raiyats to be restored to their ancient position.

6. On Head I, I have to observe that, whatever may have been the exact position, actual or legal, of the bulk of the Bengal raiyats prior to the Permanent Settlement, there can be no doubt, after the exhaustive investigation which the question has now undergone, that their customary rights† "at least included the right of occupancy conditional on the payment of" the rate of rent current and established in the locality. To this extent, therefore, I concur in your proposal to restore the raiyats to their original position.

† Paragraph 46.

Occupancy-right to attach to all "raiyatti" land.

7. Head II relates to one of the most difficult questions in the whole subject, and is that on which your proposals differ most widely both from the views of the Rent Commission and from those expressed in the letter of the Bengal Government.

8. The Rent Commission proposed to maintain the existing rule that 12 years' continuous possession of any land is required to give its holder a right of occupancy in it, but to guard

against the failure of that rule in the future, as it has failed in the past, to promote security of tenure, by imposing a penalty on eviction. This proposal, you state, has met with no support. The Lieutenant-Governor, still adhering to the principle that occupancy-right shall depend upon the status of the raiyat, proposed to confer it on all *resident* raiyats, under the provisions of section 19 of his Bill. You have fully considered* this and other schemes, and you have come to the conclusion that it is impossible to apply effectually the principle on which they are based. You, therefore, propose to take a classification of land instead of the status of the tenant as the basis on which the recognition of the occupancy-right shall be effected, and to attach that right to all "raiyatti" lands, as far as the interest in them of all but nomad cultivators and sub-tenants of occupancy raiyats is concerned.

* Paragraphs 57—62.

9. After careful consideration of your arguments, I am not satisfied that a measure is advisable which appears to me to make so great and so entirely novel a departure from both the ancient custom and the existing law of Bengal.

10. Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the raiyats their original position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds. And thirdly, the present papers show that the failure of the law of 1859 has arisen from an error, not in the principle itself, but in the provisions for its application. The provision that accrual of the occupany-right depends on proof, not of the raiyat's having been a cultivator for 12 years, but of his having held the same land continuously for that period, has enabled the landlord to prevent the tenant from acquiring the right, either by shifting his fields within the 12 years, by inducing him to enter into a written contract barring the right, or merely by destroying his evidence of continuous possession. This error it appears to me may be guarded against without abandoning the principle.

11. I would therefore suggest for your consideration whether, in place of adopting the principle you recommend as the basis of the proposed legislation, it would not be desirable to introduce into the Bill provisions somewhat to the effect that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years.

You will observe that the object aimed at is that a raiyat shall be deemed to have an occupancy-right in all the land which he holds in a village or estate, if he has occupied for 12 years any land whatever in such village or estate. It will be necessary in actual legislation to provide that this right is not forfeited by any sub-division of estates or alteration of village boundaries.

These provisions will, you remark,† have practically almost as wide an effect as your own proposals. They will, at the same time, avoid the abandonment of a principle which is, with reason, strongly insisted upon by the zamíndárs, and to which I attach much importance.

† Paragraph 107.

12. On your proposals under Head III, I have to make one preliminary observation. I understand that the sole object of this part of the Bill is to prevent the undue enhancement of rent, and that you intend the *status quo*, as regards the amount of rent, to be the basis of its operation. Thus, although a landlord may sue for an enhancement,‡ a raiyat cannot sue for a reduction of his existing rent on the sole ground that it exceeds the rent indicated by the Table of Rates. I approve this principle, but must point out that neither the wording of the Bengal Bill,§ nor the language of your letter, is quite clear on this point, and that it is desirable that the Bill, as finally drafted, shall leave no room for question about it.

Table of Rates to be framed by authority, and enhancement to be limited by it.

‡ *Vide* your paragraph 70.

§ *Vide* section 21(*d*) read with section 142(2) of Bengal Bill. *Vide* also your paragraph 65—"The most important incident of the occupancy-tenure is the privilege of paying rent according to the Table of Rates."

13. On this assumption I approve generally the proposals under this head, subject to the following observations.

14. I concur in your proposals‖ that tables of local rates, indicating the maximum rates of rent recoverable in a Court of law, shall be framed, and that the principles upon which such tables shall be based shall be laid down by the Board of Revenue under the guidance of the Local Governments, and shall require your sanction. You will not have overlooked that upon the mode in which the Table of Rates is framed for each locality will depend in great measure the eventual success of the Act; whether it shall prevent or settle, or multiply and embitter, disputes between landlord and tenant. Where existing rents are very low, where, as it appears is the case in some districts, the raiyats have succeeded in maintaining, without material enhancement, the rates in force or which were laid down at the time of the Permanent Settlement, a Table of Rates, abstractedly equitable, might possibly cause the immediate doubling of existing rents and much discontent. On the other hand, in very highly rented districts, it is not desirable that the table shall publicly set up a standard of rates much lower than the rents the raiyats are actually paying, and which they will not be able to sue to reduce. For these reasons, I presume that the principle on which the tables will be framed will be to pay much regard to the prevailing rates of the vicinity.

‖ Paragraphs 70—72.

15. As I have been unable to accept your general recommendations under Head II, it would be desirable that you should reconsider the views expressed in your 83rd paragraph, with reference to the Lieutenant-Governor's proposal to withhold from *thikadárs* the power of enhancement, which seems to have considerable weight of opinion in its support.

16. To the proposals contained in your 82nd paragraph, allowing a complete settlement of any estate on the application of its owner, or of a considerable proportion of its raiyats, I assent. Somewhat similar provisions, I observe, were included in Chapter XV of the Bill drafted by the Rent Law Commission. It deserves consideration whether every opportunity should not be taken of making a settlement of wards' and attached estates.

Occupancy-rights to be transferable with certain restrictions.

17. Your proposals under Heads VI and VII are briefly, that the occupancy-raiyat shall have the right of selling or mortgaging his holding, and consequently that it shall be saleable for his debts under decree of Court, subject to two restrictions only, that a landlord shall have a right of pre-emption, and that the purchaser shall be of the cultivating class. Upon these proposals I would observe that it is not quite clear what will be the power of the landlord over land which "is placed at his disposal as unoccupied raiyatti land."* I conclude that he will be able either to transfer the occupancy-right in it to a new tenant, being an agriculturist, or to let it at whatever rent he can obtain, subject to the acquisition of occupancy-right by the tenant, or to cultivate it himself.

* Paragraph 92.

Sub-letting to be discouraged.

18. As regards Head X, although I must express doubts whether an universal limitation of the amount of rents for all kinds of tenants, resident or otherwise, will be found possible in practice, yet I entirely agree with you that sub-letting, where the custom has not yet become firmly established, should be discouraged, and it may be well that you should carefully consider any other method of attaining that object, which may be suggested in the course of further discussion.

Introduction of village records and field surveys.

19. As regards Head XIII, while fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the province of Bihár, where the need for it is, you think, most pressing, and the conditions least unfavourable; and to this I will make no objection. I shall be glad, however, to receive full reports of the progress of the work, of the expenditure likely to be incurred, of the difficulties which may be encountered, and of the expedients by which they may, in your opinion, be overcome.

20. I trust that before proceeding to actual legislation upon this important subject, Your Excellency will maturely consider the probable effect of these measures upon the relations between landlord and tenant in provinces other than Bengal and Bihár, in which Bengal Act X of 1859 is the basis of the land law.

21. In conclusion, I cannot refrain from expressing my high appreciation of the ability and earnestness with which Sir A. Eden and the officers who, under him, have been engaged more or less directly upon the work, have treated this very important and difficult subject. I sincerely trust that the result of their and your endeavours will be to settle the land law of Bengal on a firmer, juster, and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons; and to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvement.

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No. 16, dated Simla, 17th October, 1882.

*From—The Government of India,*

*To—Her Majesty's Secretary of State for India.*

We have the honour to acknowledge Your Lordship's despatch of 17th August, dealing with the suggestions contained in our letter of 21st March last, for the amendment of the law of landlord and tenant in Bengal. We observe with satisfaction that Your Lordship recognises our full right to interpose for the amelioration of the condition of the Bengal peasantry, and also the full justification which the facts disclosed afford for legislative interposition; and especially we welcome Your Lordship's acceptance, as the basis of future action, of the fact that the customary right of the bulk of the Bengal raiyats at the time of the Permanent Settlement "at least included the right of occupancy conditional on the payment of rate of rent current and established in the locality," and Your Lordship is of opinion that to this extent we should endeavour to restore the raiyats to their original position.

2. Your Lordship, however, is not satisfied that our proposal to separate the occupancy right from the status of the occupant (in other words, from conditions of residence and period of past occupancy), and to make it inherent in the land cultivated, is advisable. You characterise it as a "great and entirely novel departure both from the ancient custom and the existing law of Bengal," and consider it inexpedient, (1), because it annuls the distinction between the resident or permanent and the non-resident or temporary cultivator; (2) because it abandons the principle of prescription accruing from twelve years' occupancy, which was adopted in 1859 on what Your Lordship considers were rational and intelligible grounds; and (3),

though Your Lordship admits that Act X of 1859 has failed to give to the raiyats the security intended, this, it is urged, is not because the principle itself was defective; and you suggest that the object in view can be attained by modifying the incidents of the twelve-years' rule, without abandoning the principle.

3. Your Lordship therefore proposes for our consideration a modification of the twelve-years' rule, to the effect that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate (*continuously*, we presume) for twelve years. The effect of the proposal, it is argued, will practically be as wide as that of our proposed plan, while it will avoid the abandonment of a principle which is strongly insisted on by zamíndárs, and to which Your Lordship attaches much importance.

4. It was not without a very full and anxious consideration of the voluminous discussions on the exact position of the raiyat of Bengal at the time of the Permanent Settlement, nor without careful attention to the numerous alternative proposals, that we came to the conclusion that by attaching the right of occupancy, as a condition inherent (with certain special exceptions) to the cultivation of the land, we were approximating, as nearly as existing circumstances permit, to the object which Your Lordship, no less than the Government of India, desires to attain—*viz.*, the restoration of the raiyats of Bengal to their original position, as it was at the time of the Permanent Settlement. We propose, therefore, in the following paragraphs to explain our reasons for considering that our provision is in reality no great and novel departure from ancient custom, but rather a return to such custom, and then to notice certain considerations which lead us to prefer, as a practical and final measure, our own proposal to the modification of the twelve-years' rule, which Your Lordship submits for our consideration.

5. The distinction which our proposal is supposed to ignore is that which ancient custom drew between *khudkasht* (resident) and *paikasht* (non-resident) raiyats. There is no longer any question as to the right of occupancy which pertains to the *khudkasht* raiyat. It was one which was quite irrespective of twelve years or any other limit of time. The position of the *paikasht* raiyat is open to more dispute, and in provinces where the land was owned by cultivating village communities it is not impossible that their jealousy may have erected barriers to the acquisition of rights by outsiders, and so have maintained a distinction which, if it ever existed in Bengal, whence village communities had for the most part disappeared before the Permanent Settlement, has long since been obliterated. Apparently at the time of the Permanent Settlement the *khudkasht* raiyat held his land as a matter of status; the *paikasht* raiyat held it as a matter of contract. A zamíndár might in old times have dispossessed the latter if the land had been required by a *khudkasht* cultivator; but the meaning of this was that the non-resident cultivator took up and relinquished such land at his pleasure; it was not his mainstay, but a margin of additional cultivation, and he usually held it, as is clearly shown, at *lower* rates than the resident cultivators. It was because raiyats were scarce that the zamíndár was glad to get his surplus land cultivated even on these terms; and it was because the land so cultivated was held at lower rates, and at the option of the non-resident cultivator, that it was justifiable in the landlord to make over his land, if required, to a *khudkasht* cultivator.

6. It is not too much to say that wherever land was permanently cultivated, it was held at customary rates; and so long as those rents were paid, the cultivator was not rejected. The real underlying condition to be considered was the permanent or temporary nature of the cultivation. The residence or non-residence was an incident which generally accompanied the permanence or non-permanence of the cultivation, and was more easy to deal with as a test; but the question on which the distinction turned was the cultivator's intention permanently to occupy the land; and it is our contention that this distinction has not been lost sight of in our proposal. As a matter of fact, the class of temporary cultivators is so small that, outside the class of nomad cultivators and of *koorfa* raiyats, it may be said scarcely to exist in Bengal. The balance of proportion between demand and supply has so altered, that the old distinction has vanished, all raiyats are now, so far as their landlords permit them to be, permanent cultivators, and to attach the raiyatti right to the land generally would, in existing circumstances, be the truest method in our opinion of restoring to the raiyats their ancient customary rights in the soil.

7. Nor do we conceive that our proposal differs more widely from the principle of Act X of 1859 than that which Your Lordship has submitted for our consideration. That proposal, equally with our own, ignores all distinction based on residence. It maintains, no doubt, a restriction of twelve years' occupation as a qualification for the accrual of occupancy-rights; but it abandons, equally with our own proposal, what was the essence of the restriction under Act X of 1859, *viz.*, the continuous occupancy of the *same* land for a given number of years; and it seems to us that, while our proposal involves a departure from the principles of Act X of 1859, not more wide than that involved in the proposed modification of the twelve-years' rule, it is really more in accord with the customary rights existing at the time of the Permanent Settlement—rights which were subject to no restriction in point of period of occupation, much less to such a hard-and-fast rule as that which was for the first time imported into the Bengal system in 1859.

8. Turning now to the practical considerations which make us hesitate before accepting the proposed modification of the twelve-years' rule as a preferable scheme to that of finally attaching occupancy-rights to the land itself, we have, first, to consider the proportion of cultivators whom it leaves unprotected. In our despatch of 21st March last, arguing on the basis

of the estimate formed by the Bihár Committee, we accepted the conclusion that this proportion would be between 30 and 40 per cent. It may be that this calculation is inexact, and it may well be that the circumstances of Bihár render it unsafe to apply such a calculation by analogy to the whole of Bengal. The proportion is at best conjectural, and we are not concerned to insist on its accuracy; but the important point to be remembered is that the number of unprotected raiyats, whatever it may be at the moment when legislation is completed, will, under Your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by pre-emption on the part of the landlord, by death without heirs, or by abandonment of the occupant, falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlords' interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating, as regards tenants from outside, the accrual of occupancy-rights by 12 years' prescription on such land, the old series of litigation, enhancement, and ejectment will recommence, and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.

9. In the meantime it is abundantly manifest that the position of this unprotected residuum will be infinitely worse than that of unprotected raiyats under the existing law. At present the landlord can effectually prevent the accrual of occupancy, rights by merely shifting his tenant from one patch of cultivation to another; under the proposed rule it will be incumbent on him to turn the tenant out of the village altogether, out of his house and homestead, as well as out of his land, and we have every reason to believe that this power, which, even as a threat *in terrorem*, would be productive of the worst consequences, would in many cases be actually put in force. The intention to do so has been openly avowed by more than one landholder, and no one who knows how steadily and pertinaciously a portion of the Bengal zamíndárs have set themselves to work to prevent the growth of occupancy-rights, how skilful they have shown themselves in discovering means of evading the spirit of the law, can doubt that they will, to the utmost of their ability, exercise any power of harassing their tenants which the law may leave them; and fence round the twelve-years' rule as we may, any rule which makes it to the interest of the landlord to prevent the growth of prescriptive rights, leaves of necessity to him both the power and the inducement to put such pressure on his raiyats as cannot fail to become intolerable.

10. Nor can we leave out of consideration in dealing with this part of the question, the effect of the proposed law on the relations between the zamíndárs on the one hand, and his occupancy-raiyats on the other. One effect of the new rule will be that a raiyat having cultivated one acre for 11 years, if he acquires 20 acres in the same estate in the twelfth year, will thereupon also acquire a right of occupancy in those additional 20 acres, while an outsider can acquire no such right. The landlord will thus have a direct inducement by every means in his power to prevent a resident occupancy-raiyat from ever increasing his holding. A second, and perhaps worse result of the proposed rule will be, that the landlord will have even greater inducement than at present to endeavour in every way possible to sever the occupancy raiyat from his land. In bad seasons, should the occupancy-raiyat fall into arrears, what mercy will be shown him? The small margin of land unhampered with occupancy-rights will inevitably appeal to him with increased urgency to seize every opportunity for evicting the occupancy-tenant, and for planting in his place an unprotected tenant. Thirdly, the old difficulty of proving continuity of occupation will remain, and there will always be an inducement for the landholder to endeavour in every way to break that continuity. A fourth objection is that the principle of free sale of occupancy-rights will be found to conflict in practice with the rule that such rights are only acquired by twelve years' occupation, for it will not be easy to maintain the position that by buying the occupancy-right in one acre, a man should thereby at once attain the same right in 20 acres which he has recently undertaken to cultivate, but in which no rights have yet accrued to him. At all events, it will obviously be to the landlord's interest to forestall such an event by preventing any one in the estate from acquiring fresh land.

11. It is not too much to say that, whereas the proposal made in our letter of 21st March introduces by a general rule, which leaves no room for evasion and is founded on the ancient customary rights, a final and simple settlement of the question which for the past 25 years has harassed and excited the agricultural population of Bengal, the proposed rule is in no way final; it leaves a certain but necessarily an increasing number of raiyats unprotected; it makes it the interest of the zamíndár to prevent these raiyats from ever acquiring occupancy-rights; it leaves him free to adopt measures both to do this, and also to increase the number of this class at the expense of those who have already acquired occupancy-rights, and it need hardly be said that any measures which the zamíndár may take with this object cannot fail to be harassing to the tenant and detrimental to the agricultural prosperity of the country. So long, in fact, as the bone of contention which the law of 1859 threw down between the landlord and his tenants remains unremoved, the old feelings of bitterness and antagonism, the old recourse to expensive litigation, possibly the old combinations, and the spirit of agrarian disturbance, will remain, diminished doubtless in area, but not therefore diminished in intensity; for we cannot too often urge that it is the twelve-years' rule, wholly alien as it was to the Bengal system, rather than anything else that has been a source of all the most serious mischief in directly arousing and maintaining the spirit of antagonism between landlord and tenant, and we look therefore with serious doubt on the proposal to maintain it even in the modified form proposed in Your Lordship's despatch.

12. There remains, then, to be considered the argument which Your Lordship deduces from the opposition which our proposal totally to abandon the twelve-years' rule is likely to encounter at the hands of the zamíndárs. If, as is urged, Your Lordship's proposal will have practically almost as wide an effect as the provision which we desire to adopt, it might be asked why the zamíndárs should oppose the one more vehemently than the other proposal? We do not conceal from ourselves that either proposal will meet with very serious and painful opposition, and it is with regret that we accept the duty of facing this opposition; it may also be conceded that of the two propositions, ours will be the more distasteful to the zamíndárí interest, but the reason why it will be the more distasteful is obvious. It is a simple and final decision, leaving no loophole for escape; it is self-acting and requires no appeal to the Courts, and so counterbalances the advantage which the litigation generally pertains to the longer purse. On the other hand, a modified twelve-years' rule leaves the whole question open for fresh litigation. It will always be in the power of a skilful zamíndár to diminish the number of his protected raiyats and increase that of his unprotected raiyats; he will always find means for evading the spirit of the law; in short, it will be open to him to deal with the new law on a smaller scale, exactly as he was dealt with the old one. Unless this reasoning is altogether erroneous, it is obvious that any preference which the zamíndárs may show for retaining a modified twelve-years' rule can be based only on the facilities which such a rule affords for defeating the declared object of Government, and from this point of view their preference, though not unnatural, scarcely commends itself to us as a reason for adopting the provisions which they prefer.

13. There is one other consideration in connection with a modified twelve-years' rule which is glanced at in the 20th paragraph of Your Lordship's despatch, but which may properly be noticed in this place before finally closing this part of our reply; and that is, the effect which the adoption of the modified rule in Bengal is likely to have in other provinces in which Act X of 1859 is the basis of the land law.

14. To this question we can only reply that the effect would be in a high degree injurious and inconvenient. If the rule would operate effectually in Bengal, because it would suddenly and without previous notice confer retrospective rights on all persons who had at the time of passing the Bill occupied land for 12 years within the village or estate, it cannot be doubt- that in other provinces to which the twelve-years' rule applies, landowners would everywhere take alarm, and in order to protect themselves from the effect of a similar enactment, they would be induced, even at the risk of serious loss and inconvenience, to prevent the growth of rights under the condition of the rule; in other words, they would do their utmost to get rid of tenants in the eleventh and twelfth years of their occupation altogether out of their estates, and would probably arrange a regular system of exchanging tenants. It is needless to point out the hardship and oppression inseparable from any such course of action.

15. It would be possible, no doubt, for the Government of India to meet this difficulty, by legislating on the same lines simultaneously for all the provinces to which the principles of a twelve-years' rule have been extended, but there are many reasons for deprecating this course. The question of landlord and tenant in temporarily-settled provinces is one of great importance, and is now engaging the attention of the Government of India in communication with the Local Governments. It is more than questionable whether a modified twelve-years' rule would be a satisfactory, or even in all cases a possible, method of dealing with it, and we should be most unwilling to hamper ourselves in regard to a matured and careful settlement of the whole question, by placing ourselves under an obligation to legislate summarily on the basis of a modified twelve-years' rule. The adoption of such a rule for Bengal, then, will have an injurious effect on other provinces if not simultaneously applied to them, and if simultaneously applied, it would materially hamper us in our complete consideration of the general question of landlord and tenant in those provinces.

16. The foregoing paragraphs will satisfy Your Lordship that we have given very full consideration to the suggestion which has been submitted to us, and we are not without hope that Your Lordship may be induced to agree with us in preferring the final and more complete solution of the problem put forward by us, to the proposed modification of a twelve-years' rule. Should we unfortunately have failed to convince Your Lordship of the correctness of our views on the question, we shall be prepared to proceed with the Bill on the lines recommended in Your Lordship's despatch, but to do so will probably involve modifications on some minor points of the Bill. The only one which need be here alluded to is the necessity of combining any modification of the twelve-years' rule with a system of compensation for disturbance to unprotected raiyats.

17. Turning now to other points mentioned in Your Lordship's despatch, we have to observe, in regard to paragraph 12, that, although our object is not merely to restrain unreasonable enhancement, but also to facilitate moderate and reasonable enhancement of rents, you have correctly interpreted our intention that the *status quo* should be the basis of the operation of a Table of Rates, and that a raiyat will not be at liberty to sue for a reduction of his rent on the *sole* ground that it exceeds that indicated by the Table of Rates. This is practically in accordance with the existing law, it having been ruled by the High Court that a raiyat having a right of occupancy is not entitled under the existing law to claim abatement of rent on the ground that his rent is higher than the prevailing rate. We have no wish to interfere with the existing law in this respect, the raiyat having always his right of relinquishment to fall back upon. Care will be taken to leave no doubts on this point in finally revising the draft of the Bill.

18. We also acquiesce in the conclusion expressed in Your Lordship's 14th paragraph, to

the effect that the Table of Rates will be framed on the principle of paying all possible regard to the prevailing rates of the vicinity.

19. We shall be prepared, should Your Lordship eventually decide on introducing the modified twelve-years' rule, to reconsider our rejection of the Lieutenant-Governor's proposal to withdraw from *thikadárs* the power of enhancement; but, as at present advised, we are of opinion that if the proposed rule is coupled with a general provision for compensating unprotected raiyats for disturbance in case of ejectment, it will perhaps be unnecessary to put a special restriction on the powers of *thikadárs* in connection with enhancement.

20. The suggestion made in the 16th paragraph for the settlement of all estates under the management of the Court of Wards and the Revenue officers will be referred to the Government of Bengal. We believe, however, that such settlements are actually carried out whenever the period of management is of sufficient duration to render the operation practicable.

21. In paragraph 17 of the despatch Your Lordship discusses the question of the effect which the power of pre-emption will have in enabling the landlord to deal with the occupancy-right in land which he may under that power have acquired, and you conclude that he will be able either to transfer the occupancy-right in it to a new tenant, being an agriculturist, or to let it at whatever rent he can obtain subject to the acquirement of the occupancy-right by the tenant, or to cultivate it himself. Under the system which we proposed, whereby the occupancy-right cannot be divorced from the land, this conclusion would be correct, save that the new tenant would at once acquire the occupancy-right in the land, but the problem becomes much more complicated if pre-emption is applied to land when 12 years' occupancy in the estate is a preliminary condition of the acquirement of occupancy-rights. We are here at once in the presence of two conflicting principles. The tenant has the right of free sale, and the purchaser would ordinarily acquire the right of occupancy; but a new tenant put in by the landlord, unless he happens to have been already for 12 years' a cultivator on the estate would have no occupancy-right, unless the landlord suffered this to grow up by the prescription of 12 years' continued occupation. Are we, then, to say that the landlord by pre-emption extinguishes the occupancy-right, and can deal with the land absolutely as if it was his *nij-jote* or *khámár* land? If Your Lordship will refer to paragraph 25 of the Bengal letter of 27th July, 1881, it will be seen how much stress the Bengal Government laid upon the opposite principle. They consider it essential that the restrictions which prevent the accrual of occupancy-rights on *khámár* land, should under no circumstances be applied to land on which raiyats have once been settled. It is no less expedient that the landlord should not be encouraged to introduce tenants-at-will from outside. The only means of preventing this under the modified 12-years' rule would be to provide that any tenant acquiring a holding, in which occupancy-rights have once accrued, should therewith acquire the occupancy-right thereof. Anything short of this opens wide the door to all the evils which, in a previous portion of the despatch, we have dwelt upon as arising out of the twelve-years' rule. Such a system would probably in practice by no means work unreasonably, as might at first sight be anticipated. The right to pre-emption is only allowed as a concession to prevent a hostile or objectionable cultivator being introduced against the zamíndár's will, and is so far a restriction upon the general principle of free sale. The right of occupancy is *ex hypothesi* worth buying, and if the landlord buys it, he is not prevented from selling it. The practical outcome would probably be that a landlord would by pre-emption acquire a right which he could resell to a favoured tenant for probably very little less than he gave for it; in other words, he would buy the right to select his tenant, not the power to destroy the occupancy-right.

22. The only alternative to this proposal that we can see, supposing the right of free sale to be maintained, is to withhold from the landlord altogether the right of pre-emption, and this, though extremely distasteful and indeed unfair to the landlord, would be a less evil than the inducement to bring in from outside a class of tenants-at-will, and to prevent their acquiring occupancy-rights, which is a necessary corollary to allowing the destruction of occupancy-right to follow pre-emption.

23. The whole complication connected with this question seems to us an additional argument for maintaining the simple rule that occupancy-right shall be inherent in the land, and not conditional on any period of continuous occupation.

24. The expression of Your Lordship's wishes conveyed in your 19th paragraph will be transmitted to the Government of Bengal for compliance. We need only remark that, while we are fully sensible of the extreme difficulties of the task, we have reason to believe that the present Lieutenant-Governor of Bengal is himself most anxious to introduce the experiment of establishing a field survey and record-of-rights in the Patna Division, where undoubtedly the need for it is most pressing, and the difficulties probably less formidable than elsewhere, and we have every hope that, under his judicious guidance, the experiment will be conducted to a successful issue.

25. We have already adverted to the subject of Your Lordship's 20th paragraph, and in conclusion we need only say that we shall have great pleasure in transmitting to the Government of Bengal, for the information of the officers concerned, the favourable notice which Your Lordship has recorded of the ability and earnestness with which this most difficult subject has been dealt with by the officers who, under the instructions of that Government, have been engaged upon it.

No. 1 (Revenue), dated India Office, London, 11th January, 1883.

*From—Her Majesty's Secretary of State for India,*
*To—The Government of India.*

I HAVE considered in Council your Revenue letter No. 16 of 17th October, 1882, on the subject of the proposed amendment of the Law of Landlord and Tenant in Bengal.

2. The telegraphic correspondence which has passed since the date of your letter under acknowledgment is transcribed below—

*From Secretary of State, to Viceroy, dated 15th December, 1882.*

Bengal Rent Law. Your despatch 17th October. I admit necessity of considerable amendment of law, but adhere to opinion expressed in mine, 17th August, that your proposals go beyond necessities of case. But the questions on which I do not agree with you appear to me of such a nature that in a legislative matter requiring much local knowledge, a discretion should be left to your Government as to the form in which a Bill should be introduced. I, therefore, will not refuse sanction to introduction of measures in form you prefer. I anticipate that discussions in Legislative Council will be valuable both for your and my guidance.

*From Viceroy, to Secretary of State, dated 22nd December, 1882.*

Bengal Rent Law. Whilst adhering to our opinion as expressed in our despatches of the 21st March and 17th October last, we must decline to introduce a Bill of which the Secretary of State has expressed disapproval on material point. We shall therefore prepare a Bill in accordance with general views expressed in Lord Hartington's 17th August, and shall introduce it in the Viceroy's Council as soon as it is ready.

*From Secretary of State, to Viceroy, dated 30th December, 1882.*

Yours 22nd, Bengal Rent Law. I approve your decision.

3. As you have thus decided that the legislation, the general principles of which were approved by my predecessor's despatch, No. 54 (Revenue) of the 17th August last, shall be framed upon the lines suggested in that despatch, I have only to express my confident hope that the full and careful examination and discussion which the Bill will receive in the Legislative Council will lead to the enactment of a law which will secure the objects stated in the last paragraph of Lord Hartington's despatch. These objects I, in common with the Government of Your Excellency, have much at heart.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 2nd March, 1883.*

## BENGAL TENANCY BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal. He said:—

"MY LORD,—I ought to explain that I am not, strictly speaking, the Member in charge of this important Bill, and that it is only through accidental circumstances that the onerous task of justifying its introduction and explaining its main provisions has devolved on me instead of on my honourable friend Sir Steuart Bayley, who is in every way so far more competent to perform this task.

"The first question with which I have to deal is whether any necessity exists at all for undertaking a general revision of the rent law? The Rent Bill has so long been a household word in Bengal, the defects of the existing law have been pointed out so repeatedly, so persistently and from so many different quarters, that there will be many to whom it will doubtless seem that this question is one which it is idle to ask and unnecessary to answer. And yet the question has been asked. We have been told that, in undertaking our present task, we are undertaking a work of supererogation. The suggestion has been made that, in taking it up, we have been actuated by a spirit of mischievous and restless activity, prompted, I presume, by the desire of finding some occupation for that superabundant leisure with which it is well known that the Government of India is endowed. Nay, it has even been hinted that our wish has been to imitate similar legislative achievements of the British Parliament, and that the Bengal Bill not only follows the lines, but was suggested by the introduction, of the recent Irish Land Act.

"So far as these hints convey any imputation of being influenced by political or party considerations, they are easily disposed of by reference to a few simple dates. The present Bill, as everybody knows, is based on the recommendations of the Bengal Rent Commission. That Commission was appointed under Lord Lytton's Government in the month of April, 1879, and had nearly concluded its labours at the time when England was in the throes of the last general election; it presented its report just eleven days after Your Excellency took your seat as Viceroy; and it was only in compliance with the pressing and urgent request contained in Sir Ashley Eden's letter of July, 1881, that the Government of India considered the question of legislation at all.

"But the truth is that, if there ever was a measure against which the charge of unnecessary, precipitate or premature legislation could not, with any decency, be brought, it is this.

If we trace it to its ultimate origin, we shall find that it embodies an endeavour to redeem a pledge which was given at the time of the Permanent Settlement, and which has never been adequately redeemed. If we examine its immediate causes, it will be easy to show that, for the last twenty years, there has been a persistent demand for a revision of the existing law, not merely on points of detail, but on points of principle; not merely as to procedure, but as to substantive rights; that this demand has grown in urgency with each succeeding year; that the subject has occupied the attention of successive Lieutenant-Governors of Bengal; that attempts have at various times been made to dispose of it by legislation in the Bengal Legislative Council; and that each unsuccessful attempt has shown the futility of any settlement which should deal only with procedure, and should leave the substantive rights of landlord and tenant untouched.

"What, then, are the facts with which we have to deal, and what are the evils for which legislation is required? Broadly stated, they are these. We have a population of some sixty millions, mainly deriving their means of subsistence, directly or indirectly, from the soil; the great majority, directly, as cultivators; a small minority, indirectly, as rent-receivers. The mutual rights of these two classes, the rent-receivers and the cultivators, are uncertain and obscure; the machinery for ascertaining and enforcing those rights is insufficient and defective; and the result is friction, which has taken different forms in different parts of the province. In Bihár, where the landlords are strong and the tenants are weak, we have rack-renting and acts of lawless and high-handed oppression on the part of the landlords: in Eastern Bengal, where, comparatively speaking, the landlords are weak and the tenants strong, we have combinations of the tenants to resist the payment of rent. This is what Sir Ashley Eden said a few years ago of Bihár, in a letter which he wrote as Lieutenant-Governor, pointing out the urgent necessity for some reform in the law:—

'In Bihár what is most wanted is some ready means of enabling the raiyat to resist illegal distraint, illegal enhancement and illegal cesses, and to prove and maintain his occupancy-rights. Apart from the backwardness and poverty of the raiyat, there are many points in the existing system of zamíndárí management in Bihár which seem to call for speedy amendment. The loose system of zamíndárí accounts, the entire absence of leases and counterparts, the universal prevalence of illegal distraint, the oppression incident to the realisation of rents in kind, the practice of amalgamating holdings so as to destroy evidence of continuous holding, are evils which necessarily prevent any possible development of agricultural prosperity among the tenant class, and place them practically at the mercy of their landlords or of the *thikadárs* (or lessees), to whom ordinarily their landlords from time to time transfer their rights.'

"And here is a picture, drawn about the same time, of the way in which the law was working, or failing to work, in other parts of the province:—

'It is to be borne in mind' (I am quoting from the Bengal Administration Report of 1875-1876) 'that the last Rent Act for Bengal (VIII of 1869) clearly lays down the conditions under which alone the rent of an occupancy-raiyat can be enhanced. But it does no more than this. It does not prescribe any rule, nor even any principle, upon which the enhancement is to be determined. The consequence is that, whenever a dispute arises, the parties cannot form any idea as to how it will be decided. The Courts do not, indeed cannot, know how to decide; and the end is that no real decision can be attained. It follows, then, that no enhancement is lawfully adjudged, and consequently the landlord is strongly tempted to obtain by illegal means what he regards as his due. This again produces resistance on the part of the raiyat; and if many raiyats are implicated, then some union or other combination is formed, which ends in a general withholding of rents by the tenantry, and an attempt at forcible exaction of it by the landlord,—in all which there lie the germs of agrarian disturbance.'

"Rack-renting here, land-leagues there. We have, indeed, in the existing state of things all the elements of agrarian misery and agrarian disturbance.

"I have broadly classified the persons interested in the soil as rent-receivers and cultivators. Let me try and explain somewhat more fully the position and proportionate numbers of the persons who make up these classes. For this purpose, I cannot do better than quote a few paragraphs from a minute which has recently been published by my friend Mr. Justice Cunningham:—

'The classes interested in the soil in India' (he says) 'are (1) the Government, (2) the proprietors or revenue-payers, and (3) tenants or rent-payers. This last class contains a great variety of holders, and is itself divided into two main divisions, namely, (*a*) tenure-holders, who represent every intermediate interest between a proprietor and the raiyat; and (*b*) raiyats, who represent persons originally let into occupation for the immediate purpose of cultivation, and who, to a great extent, are still the actual cultivators of the soil, though korfas or sub-raiyats are not uncommon. Each of these divisions, again, presents numerous varieties. 'Tenure-holders' range from a holder, who may be to all intents and purposes an owner, subject merely to a fixed and unalterable rent-charge, to holders who have merely a precarious leasehold interest. 'Raiyats,' too, vary greatly in the character of their interest, some having a right to sit at fixed rents and to be altogether exempt from enhancement; some to sit at rents which are enhanceable only under certain prescribed restrictions; some being mere tenants from year to year. The under-raiyats may, as a rule, be said to be tenants from year to year.

'The numbers of these various classes are, speaking roundly, as follows:—

'There are 130,000 revenue-payers, who pay the Government a land-revenue of about 3½ millions sterling, and enjoy a rental officially returned at something over 13 millions sterling. This 3½ millions of revenue is only half a million larger than that fixed at the time of the Permanent Settlement, namely, three millions It is reckoned, that, as the zamíndár's share was fixed at one-tenth of the gross proceeds of the rent, 'the net rental' (*i.e.*, share available for the proprietors after payment of reveuue) at that time must have been between £300,000 and £400,000. While the Government revenue, accordingly, has increased only by half a million, the landlord's share has risen from, say, £350,000 to 9½ millions sterling. But this rental of 13 millions is only an official return for road-cess purposes, and is believed by many good judges to represent very inadequately the whole amount which, in one way or another, the proprietors receive. One writer reckons the entire amount paid annually by the occupants of the soil at between 25 and 30 millions sterling.

'This rental is paid from a cultivated area of, say, 55 millions of acres,—an area about one-sixth larger than that of the United Kingdom,—which has 47½ millions of acres under crops and pasture. The agricultural rental of the United Kingdom, however, is estimated at 67 millions sterling.

'The class intermediate between proprietors and raiyats, namely, tenure-holders, numbers about 750,000 the annual income in the great majority of instances, 620,000, being below £10.

'Below this superstructure of revenue-payers and intermediate landlords come the occupants of the soil, the 'raiyats' about 10 millions in number. The following figures show their general condition:—

| | | | |
|---|---|---|---|
| Raiyats paying over | Rs. 100 | 25,000 or, say, $\frac{1}{400}$ of the whole. |
| " between | " 50—100 | 120,000 |
| " " | " 20— 50 | 680,000 |
| " " | " 5— 20 | 2,800,000 |
| " under | " 5— | 6,200,000 |

'It thus appears that there are nine millions of raiyats paying a rental below £2 per annum, and of these more than six millions pay under 10 shillings, a rental which implies a holding between two and three acres in extent.'

Taking another principle of classification, we may divide the persons with whom we have to deal into rent-receivers and rent-payers. The zamíndár belongs to the first class, the middleman both to the first and second, the occupier to the second alone, And in ordinary legal parlance we describe members of the first class as landlords, and members of the second class as tenants, applying to them terms borrowed from English law. Now, the most fertile source of confusion and mistake in India has been the misapplication of English analogies to Indian facts. Because we have described the Bengal zamíndár as a landlord, many people unacquainted with his true position have jumped to the conclusion that he is a landlord, or landowner, in the English sense of the word. Nothing can be further from the truth. Among many differences between the English landowner and the Bengal zamíndár' there are two which at once strike an Englishman who has had any practical acquaintance with the management of English estates.

"In the first place, every body knows that a large portion of the money paid by an English tenant to an English landlord as rent represents interest on capital which has been expended on farm-buildings, drainage and the like. But what proportion of the money paid as rent by the ordinary Bengal raiyat represents interest on capital?

"In the next place, the English landlord knows pretty accurately, or, if he does not, his agent knows for him, who his tenants are, what rent they pay and where their lands lie. But these are just the facts which the zamíndár complains that both he and his agent have so much difficulty in finding out, and which he is always asking us to try and help him to find out. Imagine an English landlord coming to Parliament and asking it to help him in making up a proper rent-roll.

"No; the English landlord is one thing, the Bengal zamíndár is another. A revenue-payer we found the zamíndár, a rent-receiver we made him; but a landlord or landowner, in the English sense of the word, neither we nor his own efforts have ever succeeded in making him.

"I said just now that the ultimate origin of the present measure might be traced back to the time of the Permanent Settlement. At that time, as now, there were three main classes interested in the soil of Bengal—the State, the revenue-payers or zamíndárs, and the cultivators or raiyats. I am omitting, for the sake of simplicity, the persons holding intermediate interests between the zamíndár and the raiyat. Much learning has been devoted to ascertaining the precise position and rights of the zamíndár and the raiyat at the time of the Permanent Settlement, but amidst the controversies which have for the last century raged, and are still raging on this subject, one point may be taken as conclusively proved, namely, that the great mass of the Bengal raiyats were at the time of the Permanent Settlement in the enjoyment of certain customary rights, which, at least, included the right of occupying the land conditionally on the payment of the rate of rent current and established in the locality, and, I may add, the right of having that rate of rent determined by the State. Now what the authors of the Permanent Settlement did was this. They settled and defined the mutual rights of the State and the revenue-payers or zamíndárs. They did not settle, define or ascertain the mutual rights of the zamíndárs and the raiyats. They settled and defined the mutual rights of the State and the zamíndárs by declaring that the amount of revenue payable by the latter, which had formerly been fluctuating, or fixed for short terms of years, should be fixed for all time, and should not be increased by reason of any increase in the area under cultivation. And at the same time, and as part of the same settlement, they formally declared that the zamíndárs should be deemed to be the proprietors of the soil, whatever that expression might mean; in other words, as I shall show hereafter, they transferred to the zamíndárs those indefinite proprietary rights in the soil which had formerly been claimed by the State. But they did not settle or define, they did not even ascertain, the rights of the raiyats or occupying cultivators. The legislation of 1793 left those rights outstanding and undefined, and, by so leaving them it tended to obscure them, to efface them, and, in too many cases, ultimately to destroy them. That both the Court of Directors in England, and the Governor General in Council here, were aware of the possible consequences of their legislation, we well know. Immediately before the Permanent Settlement was made the Court of Directors, in conveying instructions to the Government here with respect to it, wrote as follows:—

'In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * * * * * * * * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the raiyats and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our government.'

"In conformity with these instructions, a formal declaration was made expressly saving the right of the Government to legislate for the protection of persons having interests in the

soil below those of the zamíndárs. This declaration was embodied in Article VII of the Proclamation of the 22nd of March 1793, relative to the limitation of the public demand upon the lands, was repeated in section 8 of Regulation I of 1793, and was as follows :—

'To prevent any misconstruction of the foregoing Articles (the Articles, namely, under which the amount of revenue was permanently fixed), the Governor General in Council thinks it necessary to make the following declarations to the zamíndárs, independent taluqdárs and other actual proprietors of land :

'*First*, it being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil; that no zamíndár, independent taluqdár, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.'

"Again, it was enacted by the 67th section of Regulation VIII of 1793 (a Regulation re-enacting with modifications the rules for the Decennial Settlement) that proprietors should be bound by the restrictions in their kabúliyats, and the 9th of these restrictions, as stated by Harington (Vol. II, page 255) was

'That implicit obedience be shown to all Regulations which have been or may be prescribed by Government concerning the rents of the raiyats and the collections from under-tenants and agents of every description, as well as from all other persons whatever.'

"The duty was admitted, the power was asserted; but more than half a century elapsed before the legislature took any effective steps to discharge their obligation. And when they did take those steps, their benevolent intentions were marred and, to a great extent, frustrated by circumstances which were never foreseen or contemplated at the time of legislation.

"In 1859 was passed Act X of that year, which was entitled 'An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.'

"The most important of the provisions of that Act were as follows :—

'(1). Raiyats who hold at fixed rates of rent which have not been changed from the time of the Permanent Settlement (1793) are entitled to hold for ever at those rates If the rent has not been changed for 20 years, it is to be presumed that it has not been changed since 1793.

'(2). Raiyats having rights of occupancy but not holding at fixed rates are entitled to leases at fair and equitable rates, the rates previously paid to be deemed fair and equitable unless the contrary be shown in a suit.

'(3). Every raiyat who has cultivated or held land for 12 years has a right of occupanay in that land so long as he pays his rent; but this rule does not apply to certain private or domain lands let by the proprietor for a term or year by year. The accrual of the occupancy-right may also be barred by a written contract.

'(4). The rent of a raiyat having a right of occupancy can only be enhanced (*a*) if the rate of rent is below the prevailing rate payable by the same class of raiyat for similar land in adjacent places; (*b*) if the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat; (*c*) if the quantity of land held by the raiyat is proved to be greater than he has paid for.

'(5). Raiyats not having rights of occupancy are entitled to leases only at such rates as they and their landlords may agree upon.

'(6). A raiyat is liable to ejectment if in arrear of rent at the end of the year, but if he is an occupancy-raiyat, or holds under an unexpired lease, he can only be ejected by a judicial decree or order.

'(7). The produce of land is hypothecated for its rent and may be distrained before it is stored, but only in respect of arrears of one year.'

"Act X of 1859 was a useful and beneficial Act, and if, as must be admitted, its working has not been successful on some important points, this failure is attributable not to any defect in the fundamental principles on which the Act was based, but mainly to defects of language and expression. The circumstances under which the Act was introduced, and the changes which it underwent during its passage through the legislature, have recently been submitted to a very careful examination, and the result of this examination has been to bring out clearly two points—

"(1) that the Bill as originally introduced was not intended to codify the law of landlord and tenant in Bengal, but to amend one particular branch of it—that relating to the recovery of rent; and

"(2) that the provisions of the Act which have given rise to most controversy and difficulty were introduced into it by way of after-thought, and that the most important of them was based on a misconception of existing facts.

"The expression 'fair and equitable rates,' the twelve-years' rule, and the enhancement rules, do not appear in the original draft of the Bill: they were introduced into it by the Select Committee. The Committee explained in their report that they had substituted for the phrase 'pargana rates,' that is to say, rates current in the pargana or locality, the phrase 'fair and equitable rates,' and that they had laid down some rules by which the fairness of the rate might be ascertained. As to the twelve-years' rule, the Committee explained that the term 'resident raiyat,' which had been used in the original Bill to designate the class of persons who were to enjoy occupancy-rights, had been objected to by the North-West Board of Revenue as too narrow. In the North-Western Provinces, occupancy-rights were undoubtedly possessed in some cases by tenants who were not resident in the village, and to such cases it had been usual to apply a twelve years' rule of prescription. In order to meet this objection, the Select Committee dropped the phrase 'resident,' and adopted as the test of occupancy the holding of the same land for twelve-years. The intention was evidently to enlarge the class of occupancy-raiyats, and not to exclude any who otherwise under the broad term of 'resident raiyat' would have belonged to it.

"The alterations made by the Committee appear to have been treated as little more than verbal emendations, and were not much discussed in Council.

"It was out of the enhancement-rules that the first serious difficulty arose. No special procedure for securing the easy adjudication of enhancement-cases was prescribed, and it was

apparently thought that the general rules embodied in the Act would sufficiently guide the discretion of the Revenue Courts in fixing 'fair and equitable rents.' The Act, however, had to be interpreted by the Appellate Courts of the Presidency, and difficulties soon began to manifest themselves. In the case of *Hills* v. *Ishwar Ghose*, which was decided in 1862, the Chief Justice of Bengal, Sir Barnes Peacock, laid down the doctrine that the absolute increase in the value of the produce and also the portion of it due to the tenant's expenditure of capital or labour being ascertained, the landlord was entitled to the rest as economic rent. He took his stand on the celebrated definition of rent given by Malthus. 'Rent,' said Mr. Malthus, writing in England and 'rent,' repeated Sir Barnes Peacock, delivering judgment in Calcutta, 'is that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated, according to the usual and ordinary rate of agricultural capital at the time being.' In reply to the possible objection that this definition of rent ignored the distinction between an occupancy-raiyat and a tenant at-will, he denied the right of the former to have his rent 'fixed at a lower rate than that which a tenant not having a right of occupancy would give for it.'

"This decision did not commend itself as sound to those who were best acquainted with the true position and rights of the Bengal raiyat, and three years afterwards it was overruled by the High Court in what is popularly known as the Great Rent Case of 1865. I need not recapitulate the findings of the Judges on the numerous issues raised in that trial. Suffice it to say, that the majority of the Court altogether repudiated the definition of economic rent, and the theory that rent ought to be fixed by competition, as inapplicable to the customs and conditions of the country; and that they held the words 'fair and equitable' rent to mean 'that portion of the gross produce calculated in money to which the zamíndár is entitled under the custom of the country,' and to be equivalent to the varying expressions 'pargana rates,' 'rates paid for similar lands in adjacent places,' and 'rates fixed by the law and usage of the country.' They further held that, in cases where the enhancement of what once was a 'fair and equitable rent' was sought on the ground of the produce having increased in value, the rule of proportion should be applied; that is to say, the former rent should bear to the enhanced rent the same proportion as the former value of the produce bore to the increased value. From these conclusions the Chief Justice, as is well known, dissented, and upheld the doctrine of an 'economic rent' as laid down by him in Ishwar Ghose's case. But the rulings of the majority of the Judges became, and are now, the law of the land. Meanwhile, the Government of the North-Western Provinces had discovered that the rule, which had been introduced by amendment into Act X of 1859 for the purpose of covering the special case of occupancy-tenants who were not resident in the village, had most injuriously affected the position of the resident occupancy-raiyat. The latter, in place of falling back on the broad plea of occupancy, was now compelled to prove a continuous occupation of specific fields for an uninterrupted term of 12 years. It was found that the rule denied occupancy-rights to tenants whose very designation in the rural tongue stamped them as occupancy-tenants. 'I am informed by those qualified to judge,' wrote the Lieutenant-Governor of the North-Western Provinces, 'that the effect of the Act in many districts of the North-Western Provinces has been wholesale enhancement of rents or ejectment of raiyats who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested.'

"The question was referred by the Local Governments to the Government of India, was fully discussed between the latter and the High Court of Bengal, and brought out the valuable truth that Act X of 1859 was not intended to be an exhaustive statement of the rights of tenants, and that, its provisions notwithstanding, any claims to occupancy-rights founded on the custom of the country as to residency might be successfully maintained. The discussion seems to have merged in the more pressing question of the law of enhancement; and with the decision of the latter in the Great Rent Case, the project of amending the occupancy-sections of the Act to meet the difficulties complained of in the Upper Provinces was for a time laid aside.

"I must touch very lightly on the history of the Rent Law during the interval between the Great Rent Case in 1865, and the appointment of the Rent Commission in 1879. The chief landmarks of this period are the passing of the Bengal Act of 1869, the Pabná raiyats of 1873, followed by the passing of Sir Richard Temple's Agrarian Disputes Act in 1876, the successive attempts made in the Bengal Council to amend the law as to the recovery of rent, and, concurrently with all these, repeated and unceasing complaints of oppression and exaction in Bihár.

"The Bengal Act VIII (B. C.) of 1869 repealed, in all districts to which it was extended by the Local Government, Act X of 1859, and transferred the trial of rent and enhancement suits from Collectors to the Civil Courts. The substantive law of Act X of 1859 was, with some unimportant exceptions, embodied in the repealing Act, which was expressly confined to an amendment of the existing law in respect of procedure and jurisdiction, although the debate on the Bill brought out numerous admissions as to the necessity which existed for revising the substantive law of 1859.

"The period of seven years which followed the passing of the Act of 1869 was marked by incessant efforts on the part of landlords to obtain higher rents, and by determined opposition on the part of the tenantry, more especially in the Eastern Districts, to what they conceived to be unjust and unauthorised demands. In the Eastern Districts, the rapid growth of the jute-trade, and the improvement of communications, had placed the cultivator in a posi-

tion of comparative affluance. This accounted at once for the anxiety of the landlord to share these profits, and the resolve of the tenant to retain them.

"The administration reports of the years 1871—1876 are filled with accounts of illegal exactions on the part of zamíndárs, of the frequent reprisals of their tenants, of the formation of agrarian leagues, and of the anxious efforts of the Executive to avert breaches of the peace. The disturbances which, in 1873, broke out in the Pabná District in Eastern Bengal were but a symptom, though in an exceptionally acute form, of what was taking place in other parts of India. The Pabná raiyats arose immediately out of what has always been a fertile cause of similar disturbances—the sale and break-up of an old estate. The estate of the Nattore Rájá came into the market, and was bought by five zamíndárs, each of whom tried to make the best of his bargain by raising his rents. The landlords were Hindús, the tenants were Muhammadans; and religious differences fanned the flame of opposition by the latter to the demands of a new and rent-raising landlord. Short measurements, illegal cesses, the forced delivery of agreements to pay enhanced rents, were the main grievances which the cultivators banded themselves together to resist. The disturbances which ensued were put down with the strong hand—there were 242 arrests and 99 convictions in the sadr sub-division of Pabná; but the inquiries which the Government made into the cause of the outbreak brought into very clear light the substantial character of the tenants' grievances, and the need of applying a drastic remedy.

"The Pabná raiyats took place in the last year of Sir G. Campbell's Lieutenant-Governorship, and the first two years of his successor were fully occupied with the Bihár famine. This explains why Sir R. Temple's Agrarian Disputes Act, though closely connected with the disturbances of 1873, did not become law until 1876. The intention of the Act was to meet apprehended agrarian disturbances by transferring, in special localities and for a limited period, the entire jurisdiction in matters of enhancement and arrears from the Civil Courts to the Revenue-authorities. It was merely a temporary measure, to be put in force on application by persons interested; and, owing to causes on which I need not dwell, it was never brought into actual operation. But Sir R. Temple always intended to supplement it by permanent legislation, and in August 1876 proposed to introduce a Bill to define the principles on which the rights of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realising arrears of rent in undisputed cases, and to make the interest of an occupancy-raiyat liable to sale for default in paying rent and transferable by private agreement.

"These proposals had not, however, been fully considered when Sir R. Temple, early in 1877, made over charge to Sir Ashley Eden; and it was then arranged that the larger amendment of the law should be deferred, and a Bill providing only for the realisation of undisputed arrears introduced at once.

"When, however, the Bill was introduced into the Bengal Council, it was found that it was impracticable to limit its scope to procedure only. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognized that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent and, possibly, sub-letting.

"It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the law not ostensibly affected by it; and, in February 1879, a majority of the Select Committee recommended that the whole subject of a revision of the Rent Law should be once for all fairly faced.

"This proposal was supported by Sir Ashley Eden, and, in April, 1879, the Government of India sanctioned the formation of a Commission to prepare a digest of the existing statute and case law, and to frame the draft of a consolidating Bill.

"Meanwhile, a separate discussion had been going on with reference to the abuses which I have already mentioned as prevailing in the relations between landlords and tenants in Bihár. As far back as the year 1868, the late Lord Lawrence, who was then Governor General, had recorded a minute relating to the depressed state of the peasantry in Bihár, in which he had said that he believed 'that it would be necessary for the Government, sooner or later, to interfere and pass a law which should thoroughly protect the raiyat and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it.' Again, in the years 1875 and 1876, when the condition of Bihár came under consideration, it was acknowledged that some remedies must be applied. Two years later, the Lieutenant-Governor, Sir Ashley Eden, appointed a Committee of experienced Bihár officials to advise on the matter; and, on the 8th of March, 1879, they submitted their report, proposing so many changes of the existing law that they did not consider that the requirements of the case could be properly met by a mere amending law. They were of opinion that the whole Rent Law should be revised.

"Thus, two independent Committees arrived simultaneously at the same conclusion, namely, that the time for a complete revision of the existing law had arrived.

"The Rent Commission was appointed in April, 1879, about a month after the presentation of the report on Bihár, and that report was referred to the Commission for consideration.

"The Members of the Rent Commission were Mr. Hampden, Member of the Board of Revenue, as President; Mr. Field, who was then District Judge of Burdwan and is now one of the Judges of the High Court; Mr. Harrison, who was then Secretary to the Board of Revenue; Mr. M[illegible], who was then Secretary to the Government of Bengal and is now one of the Secretaries to the Government of India; Mr. O'Kinealy, who was then Legal Remembrancer and officiating as a Judge of the High Court; and three Native gentle-

men, Bábú Mohini Mohan Roy, Bábú Peary Mohan Mookerjee, and Bábú Brojendro Kumar Seal.

"Their instructions were—

"(1) to prepare a careful analysis and digest of the existing Rent Law, as contained in the Acts and Regulations concerned with this subject, and in the decisions of the Courts since the passing of Act X of 1859, and

"(2) after considering the suggestions for amendment that had been put forward of late years, to endeavour to prepare a draft Bill embodying such additions to the substantive law, and such improvements in the law of procedure, as might be found advisable.

"The digest was first compiled by Mr. Justice Field, and was submitted in August, 1879.

"The draft Bill and an elaborate report explaining fully the alterations which the Commission proposed to make in the existing law, and the reasons for proposing them, were submitted in June, 1880, and were published in 1881.

"Never had the relations of landlord and tenant in Bengal—rarely has any subject of legislation—been so thoroughly, so patiently, so exhaustively examined as by the Bengal Rent Commission. They have thrown a flood of light on the past and present legal and economical position of the raiyat; they have ascertained the existing law on a most complicated and difficult subject; they have determined the main lines on which any amendment of that law must proceed. Their minute and careful inquiries have placed beyond question or doubt the broad and important fact to which I referred in the opening part of my speech, namely, that whatever may have been the position, actual or legal, of the bulk of the Bengal raiyats before the Permanent Settlement, their customary rights at least included the right of occupancy conditional on the payment of the rate of rent current in the locality, and the right of having that rent fixed by Government. And, whatever may be the precise form that may be assumed by any legislation for the purpose of declaring, confirming or restoring those rights, that legislation must inevitably build on the foundations which have been laid, and follow the lines which have been traced, by the Rent Commission. To each and all of the Members of the Commission the thanks of the Government and of the public are unreservedly due; and, if there is any one member of the Commission to whom those thanks are due in a special manner, that member is Mr. Justice Field. Before the Commission had begun their labours, he had, by his admirable edition of the Bengal Regulations, shown himself to be a past master of the subject with which the Commission would have to deal. The popular view of the Bengal rent question has long been the same as that which used to be entertained about the Schleswig-Holstein controversy, namely, that it was one of those subjects which no ordinary person can understand. But, before any person commits himself to an expression of that opinion, I would advise him to procure and read Mr. Field's admirable Introduction to the Regulations of the Bengal Code. He will find in that Introduction a concise and lucid exposition, expressed in language which is as intelligible to the amateur as it is to the expert, not only of the existing rights of landlord and tenant in Bengal, but of the circumstances out of which those rights arose, and the mode in which they have been altered by administration, by legislation and by changes in political and economic conditions. Mr. Field's digest, which collects the whole of the statute law and the case law connected with the subject of landlord and tenant in the Lower Provinces of Bengal, at once took its place as an authoritative statement of that branch of the law; and, as we are not, by our present Bill, attempting the ambitious task of framing a complete code of the law of landlord and tenant, it is a great satisfaction to me to think that we already have, and shall continue to have, in this digest the best possible substitute for such a code. And, lastly, it is no secret that we are indebted to Mr. Field's pen, not only for the draft Bill which was submitted by the Commission, but for their elaborate and admirable report.

"That report has long been before the public, and I may assume that my audience are familiar with its contents. I will, therefore, simply summarise the most important of the proposals of the Commission.

"The twelve-years' rule under which an occupancy-right is acquired by prescription was retained, but it was proposed to create a new class of subordinate occupancy-raiyats by providing that a tenant, who had held for three years and less than 12 years, should be protected from ejectment at the will of his landlord, that he should be entitled to claim abatement of rent like occupancy-raiyats, that his landlord should not be able to enhance the rent at his pleasure, and that, if the raiyat thought the rent demanded unreasonable, he might give up the land and demand compensation for disturbance and for such improvements as he might have effected. These provisions, it was hoped, would, by protecting this class of tenant from eviction, eventually enable them to secure the full occupancy-right. This right, as regarded its incidents, was more fully and clearly defined by the Commission than it had been previously either by statute law or by case law. An attempt was also made to distinguish the occupancy-raiyat from the tenure-holder, by restricting the area which could be let as an occupancy-holding to 100 bighas. The occupancy-raiyat was declared to have the right of transfer by sale, gift or devise, subject to certain conditions as to the landlord's consent, but he was not to be allowed to mortgage. He was exempted from ejectment for arrears of rent, as henceforth the landlord's remedy was to lie in the sale of the holding. He was to be allowed the benefit of all improvements, and full liberty to deal with the land as he thought best; but limits were to be set to the rent he might demand from an under-tenant.

"Other recommendations of the Commission applied to all classes of tenants, irrespective of their status or rights. Thus, the right to erect a brick or other house upon his holding,

irrespective of the landlord's permission, was given to every raiyat; distraint of crops as a mode of recovering rent was abolished; and str[illegible] provision was made for the giving of receipts and the maintenance of zemíndárí accounts.

"As to enhancement of rent on occupancy-holdings, the substantive law was, in the main, retained; but a proviso was added in virtue of which an increase in the letting value, due neither to the landlord nor to t[illegible] tenant, was to be equally shared between them. It was further proposed that the enhanced rent, when obtained on the ground of increase of value of the produce, should not be more than double the former rent, and that no enhanced rent should exceed one-fourth of the average annual value of the produce of the land.

"As to procedure in enhancement-suits, the Commission proposed to require the landlord, when suing on the ground of an increase in prices, to proceed in the Collector's Court, but to leave him, in other cases, the option to elect the Civil Court or the Collector's Court, unless the latter Court had been generally or specially vested by competent authority with sole jurisdiction. Power was given to the Collector, in dealing with such suits, to prepare a Table of Rates, or an enhanced rent-roll, or to effect a complete re-settlement of the estate, as the circumstances of the case might require. The Table of Rates was intended to show the different classes of land prevailing in the estate or locality, with the prevailing rates of rent, and the enhanced rates warranted by the law. In drawing up this table the Collector was to be guided by the representations of both parties; it was not to take effect until it had been duly published, and it was to hold good for ten years.

"If the landlord failed to effect a settlement with the tenants on the basis of the Table of Rates, the Collector might go a step further and prepare an enhanced rent-roll of jamabandí, showing not merely enhanced rates of rent, but the actual rent at these rates which each tenant was to pay. This rent-roll was to hold good for ten years.

"In exceptional cases, where a new landlord, on coming into possession, was prevented, by a combination among his tenants, from ascertaining the holdings or even the names of the latter, the Collector might prepare a complete rent-roll by means of proceedings which, practically, involved a settlement of every holding of the estate.

"Finally, in making proposals for an abbreviated procedure in rent-suits, the Commission recommended that certain portions of the Civil Procedure Code should not be extended to rent-suits at all, that the right of appeal in petty cases should be abolished, and that, in all cases, the summons should be for the final disposal of the suit. In making these recommendations, the Commission expressed their conviction of the extreme danger of summary methods of justice, and their inability to propose a revival of the 'summary-suit' system of the old Regulations.

"The Commission's Report seems to have reached the Government of Bengal in June 1880. On the 15th of July in the same year, it was forwarded by Sir A. Eden to the Government of India, with a letter in which he expressed his opinion that the Report and Bill, 'however open to modification in details, presents, on the whole, a reasonable basis for legislation.' Sir A. Eden's own views are very clearly stated in this letter. He considered that 'a general revision of Act X of 1859 was urgently called for in Bengal,' and that 'in the interests of the Government, of the landowners themselves, and of the agricultural community at large, it was very desirable, even at this late day, to define and strengthen the position of the great mass of cultivators.' 'He would like,' the letter continues—

'to see the Bengal raiyats, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times. He would, at the same time, not seek in any way to diminish or encroach upon the existing emoluments of zamíndárs or other rent-receivers. On the contrary, he would like to help them to realise their rents more punctually; and, even where these are now excessive, he would not seek to interfere to lower them. He would substitute for the present large and uncertain power of enhancement which the law seems to give to landlords, but which they are quite unable to utilise, a reasonable system of regulating rents, under the control and direction of Government officers, such as the universal custom of India originally favoured and recognised. The zamíndárs will thus be admitted to share in the growing prosperity of the country upon fair terms; and, though they will not have all that they claim in theory, they will have a great deal more than they are now able actually to enjoy in practice. They will cease to feel the irritation of unsuccessful desire, while their tenants will cease to look upon them as their natural foes.'

"These words were repeated in a letter which was addressed in December 1880 by Sir A. Eden to the British Indian Association, and in which he asked for an opinion on the proposals of the Rent Commission. After quoting them as an exposition of his general policy he went on to say:—

'The chief point to be kept in view is the establishment of the occupancy-tenure upon a broad and permanent basis. Protection against arbitrary eviction must certainly be given to every settled cultivator who pays the established rent. No raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent. A substantial tenantry, free from debt, and in a position to save and bear the pressure of occasional bad seasons, is what Bengal requires. The Lieutenant-Governor desires therefore to see the occupancy-tenure made the rule and not the exception; but at the same time he would have it kept as far as possible in the hands of *bonâ fide* cultivators, and sub-letting by occupancy-tenants should be discouraged, if it cannot be altogether prevented.'

"He added that he did not—'

look upon the occupancy-tenant as entitled to sit at any specially *privileged* rate of rent, but only at the established rates ruled to be equitable for the classes of land held by him and approved by the Revenue-authorities. This being the case, all that the Government desires to do is to protect him against arbitrary ejectment, and provide by law that the amount of his rent shall not exceed fair and equitable limits, open to authoritative revision from time to time.'

"Meanwhile, Mr. Reynolds had, with the assent of the Government of India, been placed on special duty to revise the Bill. Mr. Reynolds' work was accomplished in the winter months of 1880-81. His revised Bill was then submitted to District Officers and to various Associations for opinion; and in July 1881, Sir A. Eden was able to communicate his matured proposals to the Government of India. The extent to which public opinion had been taken on the Bill, as originally prepared by the Rent Commission, and as redrawn by Mr. Reynolds, is shown in the bulky volumes which were submitted by the Government of Bengal to the Government of India, and which we now propose to publish. No less than sixty-four reports, memorials and notes—many of them of great length—had been received and carefully considered. 'There was hardly a principle or a section,' the Government of Bengal was able to say, 'that had not formed the subject of comment or controversy.'

"With Sir A. Eden's letter was forwarded, not only Mr. Reynolds' Bill, but also a revised draft of that Bill, embodying the amendments which had commended themselves to the Lieutenant-Governor. The accompanying letter explains the main points on which this revised draft, which may be described as Sir A. Eden's Bill, differs from the Bill of the Rent Commission, and the reasons for these divergencies. In summarizing the contents of this letter, I cannot do better than avail myself of Mr. Justice Cunningham's minute. The conclusions at which Sir A. Eden had arrived were:—

'1. That from 1863 the necessity of a radical revision of Act X of 1859 had been admitted on all hands; that since the Pabná riots in 1873 this necessity had been recognised as urgent; and that the landlords had been as forward as any class in pressing for a change in the law

§ 12.

'2. That Act X of 1859, while opening the door to certain classes of raiyats who had no claim to occupancy-rights, had on the whole operated to the detriment of the entire body, especially in Bihár, where 'only the more powerful raiyats had succeeded in resisting the landlords' encroachment,' where occupancy-rights had to a large extent disappeared, and the rents of the great mass of tenantry had been enhanced to twice their former amount within the last 16 years.

§ 22.

'3. That the rights originally conferred on the zamíndárs, whatever else they might have been, were not those of 'absolute proprietorship,' the Government prescribing a fixed rental to be adjusted by itself according to recognised rules, stringently forbidding any other exaction on the part of the landlords, taking numerous precautions for the protection of the raiyats '*in their possession*,' and reserving to itself the right of future interference should it ever be necessary, on their behalf, without such interference giving rise to any claim on the part of the zamíndárs for abatement of revenue

§ 20.

'4. That the rents of Bengal were and must, in existing circumstances, continue to be 'customary,' not 'competitive,' in the sense of the word employed by economists, the real competition being that arising from the necessity of large numbers who must live off the land, and have no alternative but starvation; that it was the duty of the State to regulate this customary rate, and so to fix the extent of beneficial interest left to the raiyats, and thus, in the words of a distinguished Revenue-officer, to recognise 'the raiyat's right, founded on the most ancient authentic records and uninterrupted prescriptive usage, through a succession of Governments, native and foreign, from ancient times to our own, to have their payments fixed by the authority of Government.'

§ 26.

§ 28.

'5. That these occupancy-rights belonged by the old law and custom to the gross mass of the resident raiyats, as laid down by the highest authorities, *e.g.*, Mr. Holt Mackenzie in 1832 and Sir William Muir, who says, 'I am satisfied that the khudkasht or resident raiyat cultivator of Bengal was the ordinary type of hereditary or proprietary raiyats common throughout India. In fact, it appeared to be admitted by the chief spokesman of the zamíndárs that khudkasht raiyats of all degrees always had an occupancy-right.'

§ 30.

Page 49.

'6 That the present time afforded the best opportunity for legislation.'

"The means by which Sir A. Eden proposed to meet these obligations were—

'1. To give to all 'resident' raiyats occupancy-rights, putting a liberal construction on the word 'resident.'

'2. To provide for enhancement of occupancy-tenants' rates, by preserving the existing rules as to enhancement, but making those rules workable by having an official table of the rent and prices drawn up in each district, by which claims to enhancement can be adjusted by specially appointed tribunals. There would, in fact, be a sort of rent-settlement conducted by local officials of experience, by which the customary rates in each locality would be ascertained and declared.

§ 29.

§ 14.

'3. To provide that the rents, thus declared just and equitable, should be binding on the landlord, no private contract being allowed to supersede them.

§ 24.

'4. To guard against the conversion by the landlord of raiyattí land, *i.e.*, land over which occupancy-rights exist, or can be acquired, into 'khámár,' nij-jote or sír land, over which the landlord's proprietary rights exclude the growth of any subordinate interests. 'Khámár' lands appear to have been originally merely the surplus unreclaimed land of the village, which the landlord was allowed, during the continuance of his revenue-engagement with Government, to cultivate for his own benefit, but which became 'raiyattí' as cultivators settled on them.'

§ 25.

"These proposals involved several material departures from the recommendations of the Rent Commission. The most important change related to the definition and status of the occupancy-raiyat. The Commission had recommended the retention of the twelve-years' rule as given in Act X of 1859, but proposed to create an intermediate group of tenants possessing inferior occupancy-rights, with a view of bridging over the gulf between the twelve-year occupancy-tenant and the mere tenant from year to year or at will. These recommendations were as already shown, the result of a compromise between those members of the Commission who wished to retain the letter of Act X of 1859, and those who wished to give effect to its undoubted intention. Sir A. Eden, as he told the British Indian Association, was for placing the occupancy-tenure on a broader and more permanent basis. He thus had to go back to the old phraseology of 'resident raiyat,' and to find in a satisfactory definition of this term the solution of the question. In his Bill, a resident raiyat was one who had resided for three years

in a village, and a right of occupancy was conferred on every resident raiyat in all lands held by him within that village, or within a certain distance of his home.

"The Table of Rates was the second important point in which Sir A. Eden's Bill departed from the Rent Commission's proposals. Discarding the Rent Commission's scheme of concurrent jurisdiction, Sir A. Eden fell back upon the old principle of the pargana rate. As he had restored the 'resident' raiyat to his ancient position, so he proposed to restore the 'pargana rate' as the true index to the raiyat's rent. The preparation of these Tables of rates and authorised Tables of Prices was to be entrusted to specially qualified Revenue-officers. Sir A. Eden thought he saw his way to providing—

'an agency which should in the course of a reasonable number of years determine the equitable rates of rent payable in all districts of Bengal, with due regard to existing rents, the increased value of produce, and other things. There can be no doubt, as already remarked, that in most districts these operations would largely increase the incomes of the zamindárs. The raiyats would, however, be protected by all the reservations and limitations suggested by the Rent Commission; the enhancements would be moderate, and at the same time authoritative; and the general result should be the removal of much cause of friction as between landlord and tenant, and the establishing of the beneficial interest of the occupancy-raiyat, and consequently of the agricultural prosperity of Bengal, upon a definite and permanent basis.'

"A third material question on which Sir A. Eden saw cause to differ from the Rent Commission related to the power of distraint. In the interest of the landlords he considered that distraint should be retained in a modified form. He proposed to make distraint throughout a process of the Court, to confine the right to distrain to one year's rent, and, in the absence of a written contract or an order of enhancement, to the amount payable as rent in that year. The raiyat was to be allowed to guard against it by depositing the rent claimed or security for it in the treasury. The right was further fenced in by restrictions as to co-sharers and unregistered landlords, and by provisions for the gathering and storing of distrained crops and for raising the distraint at any time before sale by payment under protest of the sum claimed into the Collector's Court. Distraint would thus practically take the form of a summary suit, and yet be open to less objection than any form of summary suit followed by an ordinary decree.

"In addition to distraint, Sir A. Eden proposed to give assistance to landlords in realising their rents in three other directions—

(1) by the establishment of special Rent Courts;
(2) by adopting the abbreviated Small Cause Court procedure of the Rent Commission;
(3) by conceding in certain cases summary sale without decree.

The last privilege was to be granted only by special order of the Government to a proprietor on proof that a proper system of accounts and registration was kept up on his estate. And Sir A. Eden was not inclined to grant it readily. 'Summary sale without decree,' he wrote, 'after service of a notice, which, however 'duly' proved, the raiyat probably never saw, would mean to him utter ruin without warning and without remedy. The Lieutenant-Governor would never consent to such procedure as of general or ordinary application.'

"This, then, is the position in which the Government of India found the Bengal rent question when they took it up after the receipt of Sir Ashley Eden's letter of July 1881. The subject had engaged the unremitting attention of three Lieutenant-Governors; it had been threshed out as few subjects have ever been threshed out before; there was a general concurrence of opinion both as to the nature and magnitude of the evils which had to be dealt with, and as to the necessity for dealing with them in a general and comprehensive manner: and lastly, the lines on which remedial legislation must proceed had been clearly marked out.

"Nor was it by the Government of Bengal alone that the necessity for legislation had been insisted on.

"Holding an independent inquiry, the Famine Commission had come practically to the same conclusions, and made substantially the same recommendations as the Government of Bengal. 'The Commission have received a large amount of evidence,' they report,

'remarkable in its weight and unanimity, to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel, no doubt, that the condition of the rent law and the way in which it is administered in Bengal are, as it was described to us by a high official of the province, a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, mainly owing to this cause, in a state of poverty, at all times dangerously near to actual destitution, unable to resist the additional strain of famine.'

"And, in speaking of the necessity for legislation and of the kind of legislation that is required, they go on to say—

'We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. This opinion is primarily based on the historical ground that they have a claim, as a matter of strict justice, to be replaced, as far as possible, in the position they have gradually lost; but it may also be supported on the economical ground that, in the case of these large cultivating classes, security of tenure must have its usual beneficial effect; and that, as a rule, the cultivators with occupancy-rights are better off than the tenants-at-will. Wherever inquiry has been made it has been found that, in all matters relating to material prosperity, such as the possession of more cattle, better houses and better clothes, the superiority lies on the side of the occupancy-tenants, and the figures in the preceding paragraphs also show that, as a rule, they hold larger areas of land. Where the subdivision of land among tenants-at-will is extreme, and in a country where agriculture is almost the only possible employment for large classes of the people, the competition is so keen that rents can be forced up to a ruinous height, and men will crowd each other till the space left to each is barely sufficient to support a family; any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind, such as can hardly be conceived by a community where a diversity of occupations exists, and where those who cannot find a living on the land are able to betake themselves to other employments.

'It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent, and security for improvements, that we can expect to see property accumulated, credit grow up and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owing no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security together with the protection of the tenant-at-will in his just rights and the strengthening of his position by any measure that may seem wise and equitable.'

"After what I have said, it must be abundantly clear that there is an urgent need for legislation, and that the two main objects at which our legislation should aim are—

*1st,* to give reasonable security to the tenant in the occupation and enjoyment of his land; and

*2ndly,* to give reasonable facilities to the landlord for the settlement and recovery of his rent.

"That both of these are legitimate objects of legislation no one will be found to deny. But we have been told that, whilst there is no reason in the world why we should not effect the one, there is a serious obstacle in the way of our effecting the other. We may legislate to enlarge the powers of the landlord, but we cannot legislate to enlarge the rights of the tenants. And why? Because we are barred from doing so by contract, the contract, namely, with the zamíndárs which was embodied in the Permanent Seltlement. Now, far be it from me to enter into any minute or exhaustive inquiry into the meaning and effect of the numerous documents which, together, make up what is known as the Permanent Settlement. The time allotted to the performance of business in this Council is not long enough—life itself would hardly be long enough—for the due performance of such a task. I am quite aware that my hon'ble colleague, Mr. Kristodás Pál, and myself might bombard each other for many a long summer day with rival extracts from the literature of 1793, without making a single step in advance. And, if I were rash enough to embark on such a controversy, I should throughout it be haunted by an uncomfortable consciousness of the presence of that worthy and portly nobleman, whose picture hangs on our Council-room wall, and who would seem to be looking down with an amused and complacent smile on our persistent and futile efforts to make out what on earth he meant. All that I can venture to do is, to state, as briefly as possible, the impression which the main features of the controversy have produced on one to whom the subject is comparatively fresh, and who has endeavoured to approach it with that impartiality which ought to be the characteristic of a well-balanced and ingenuous mind. Now, I will not pause to consider how far a Government can, by entering into a contract, prevent itself and its successors for all time from doing that which, in the interests of the general welfare of the community, might apart from contract be justifiable and necessary. It is not necessary that I should do this; because, whilst fully admitting the existence of a contract and its binding character, there is no great difficulty in showing that this so-called obstácle to legislation for the protection of the tenant is no obstacle at all, that it is a mere phantom barrier which, the moment that it is approached, dissolves into thin air.

"What was the contract embodied in the Permanent Settlement? Who were the parties to the contract, and what was its intention and effect?

"The main features of the case admit of being very simply stated. Before 1793 the zamíndárs were, as they are now, the persons responsible to the Government for the payment of the land-revenue in cases where that revenue was not collected directly from the cultivator. The amount of land-revenue which each zamíndár had to pay, and for the payment of which the Government held him responsible, was fixed by contract or arrangement between him and the Government. Such contracts were termed settlements. They sometimes related only to the revenue of a particular year, but it was found in practice more convenient to make them for a term of years. Before 1793 there had been two or three quinquennial settlements, and in 1793 there was in force a decennial settlement, or settlement for a term of ten years. The Government agreed with the zamíndárs that this settlement should be made permanent, and that no addition should be made to the amount of revenue by reason of any future increase in the area under cultivation. In other words, the Government fixed in perpetuity that which had previously been fixed either for a single year, or for a term of years. The Permanent, Settlement, then, was simply a contract between the Government and the zamíndárs as to the amount of land-revenue payable by the latter to the former. The parties to the contract were the Government on the one hand and the zamíndáars on the other. The raiyats were not consulted about the arrrangement, and were in no sense a party to it; and, according to the most ordinary principles of contract, it could not affect any right which they then had or might thereafter acquire.

"But then it was said that at the time of the Permanent Settlement, and as part of the same arrangement, a formal declaration was made declaring the property in the soil to be vested in the zamíndárs; that throughout the Regulation of 1793, which confirmed and gave effect to the Permanent Settlement, the zamíndárs are described as the 'proprietors' or 'actual proprietors' of the land; and that this declaration and description are inconsistent with the notion of proprietary rights in the land being vested in any other class of persons. As to the use of the term 'proprietor,' no serious argument can be based upon it. I have heard of the magic of property. But I never understood that there was any such magic in the phrase 'proprietor' as to wipe out any rights qualifying those of the person to whom the phrase was applied: and it would be specially difficult to show that it had any such effect in the Regulation of 1793.

"In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and therefore could not possibly be taken as indicating, or, to use a technical term, connoting, rights created at that date. And thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement-literature of British India. It means, in those parts of India which are not permanently-settled, the person who, whatever may be his rights in the soil, has the right of having a settlement made with him, the person, namely, whom for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term 'proprietor' in this sense is closely analogous to the use of similar terms in English statute law. Here, for instance, is a definition of 'owner' taken from a recent English Act—the Public Health Act of 1875:—"'Owner' means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent" In this case, the legislature has said:

We intend to impose certain sanitary duties on the owners of lands and houses. We will not inquire too closely which of several persons ought, as between themselves, to perform those duties. It is sufficient for our purposes to find out who gets the rent; we will treat that man as owner for the purposes of the Act. We will make him primarily responsible for the performance of duties imposed on owners by the Act, and leave all questions between him and third persons untouched. And this is precisely the policy which the East India Company adopted in Bengal before the date of the Permanent Settlement. They found a number of persons claiming interests in the soil. Which of those persons had the best claim, as against the others, to be considered true owner of the soil, was a theoretical qestion of enormous difficulty. But which of those persons ought, for land-revenue purposes, to be dealt with as owner of the soil, and primarily liable for land-revenue accordingly, was a practical question which admitted of a practical solution. The East India Company settled it in Bengal by selecting the zamíndárs as the persons to deal with, and they christened them land-holders or proprietors accordingly.

"What, then, is the meaning of the formal declaration referred to in Regulation I of 1793, that the property in the soil was vested in the land-holders, and of the statement in the same Regulation, that the property in the soil had never before been formally declared to be so vested?

"Here again, if we bear in mind what is so often insisted upon by the zamíndárs, that the Permanent Settlement was a contract, that is to say, an arrangement between two parties, the Government on the one hand and the zamíndárs on the other, and that this declaration was embodied in, and formed part of, that contract, there is no real difficulty in coming to a conclusion as to what it really meant. In dealing with persons who had interests in the soil, the Government claimed rights over them in two capacities. It claimed to be both supreme Government and supreme landlord. In one capacity it was dealing with subjects; in the other capacity it was dealing with sub-proprietors or tenants. But it was never very easy to say either what its rights as supreme landlord comprised, or at what point the line was to be drawn between its rights as landlord and its rights as Government. As to the first question, it is, of course, obvious that the rights of a supreme landlord may be of the most limited nature. According to the theories of English law, all English land is held mediately or immediately of the Crown, and therefore, says Blackstone, 'the sovereign only hath *absolutum et directum dominium* in the land.' But we all know that this absolute and direct ownership or proprietary right is of the most shadowy character. And as to the second question, I need only remind an Indian audience of the eternal controversy whether that share of the produce which is payable to the Government in districts not permanently settled ought more properly to be denominated revenue or rent. Now, it was this second question which the Government endeavoured to solve in making the Permanent Settlement. It said to the zamíndárs, we will not only fix for ever that share of the produce for the payment of which you are to be held responsible, but we will give up to you our claim to be considered your landlords. What you pay us shall be revenue, not rent. As between ourselves, you, and not we, shall be deemed to be the proprietors of the soil

"But there were three things which the Government did not do by the Permanent Settlement. It did not divest itself of its general right—a right which belonged to it not as landlord but as Government—to make from time to time such laws and adopt such administrative measures as it might think expedient for the general welfare of all classes of its subjects; it did not define the nature and extent of the proprietary rights which it gave up to the zamíndárs; and it did not include in its grant any proprietary or *quasi*-proprietary rights belonging not to itself, but to some other class of persons. Before the settlement, the zamíndárs, when not cultivating themselves, occupied a middle position between the Government, with substantial but ill-defined proprietary rights over them, and the great mass of cultivators, with substantial but ill-defined proprietary rights under them. After the settlement, they were freed from the one, but they remained subject to the other.

"Nor is there any ground for the suggestion that the occupancy-rights which at the time of the Permanent Settlement were—I will not say saved, for they required no express saving, but—left outstanding, included only the rights of those raiyats who happened to be in occupation at the date of the settlement. If there was at that time—as it seems abundantly clear that there was—an established custom or usage under which the resident raiyats, that is to say, the great mass of the cultivators,—for an agricultural population is essentially stationary in its habits,—under which the resident raiyats were entitled to hold at fixed rents, that custom or usage would, according to the ordinary principles applicable to the interpretation of statutes, be unaffected by the legislation of 1793, and would protect not only those who had taken up lands before that date but those who might take up lands at any subsequent date.

"We have, indeed, been told that it was part of the bargain between the Government and the zamíndárs that the latter should not only be exempted from payment of revenue for lands which were then waste, but which might subsequently be taken into cultivation, but should be given full and absolute discretionary powers as to the mode of dealing with such lands, unqualified by any village-custom or local usage. But it would require extremely strong and clear words to make an enactment conferring such powers,—an enact ment which would be inconsistent with all Indian notions as to the rights of a reclaiming occupier in the land which he brings under cultivation, and which would throw into, and keep permanently in, the category of khámár or private land the whole of the then vast area of the unreclaimed land of Bengal. It would require, I say, very strong and clear words to effect such a revolution; and I cannot in any of the Regulations of 1793 find words on which such a construction could reasonably be placed.

"And, even if any such right had been conferred, it would have been controlled and qualified by the express reservation of a power to legislate from time to time for the protection of the cultivators of the soil.

"No; in construing the documents connected with the Permanent Settlement, as in construing other documents of a like nature, general words must be read with reference and subject to specific rights and customs, and a bargain between two parties must not be treated as affecting the rights of any third party. Construed in accordance with these principles, the Permanent Settlement did not, of its own operation, prejudicially affect any rights of the existing generation of cultivators, any custom or usage tending to protect the rights of future generations of cultivators, or any power of the legislature to interfere from time to time for the protection of those rights.

"We may, therefore, I hold, proceed fearlessly and with a clear conscience to legislate in such manner as may seem most conducive to the interests both of landlord and of tenant, undeterred by any phantom which would bid us turn aside from the path of equal justice, and bearing in mind that, if we interpose to strengthen the powers of the landlord, we should not be doing equal justice if we did not at the same time take steps to maintain, to secure and to fortify the rights of the tenant.

"Our first object, then, must be to take care that the Bengal raiyats, as a class, shall be (I am using Sir Ashley Eden's words) 'secured in the enjoyment of those rights which the current law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the pressure of bad times.'

"To protect the raiyats as a class. But how is that class to be defined? I have often asked that question, and the answers which I have received remind me of the well-known answer which is said to have been given by a Cambridge undergraduate to a Board of Examiners who pressed him sorely to define the centre of a circle. He traced a circle with his finger in the air, pointed to the middle of it, and said 'there.' We all know in a general way what is meant by the expression 'raiyat'; we all know in a general way what we mean when we speak of the resident or settled raiyat, or of the resident or settled cultivator; but we cannot give any precise definition of the class without running a serious risk of including some whom we ought to exclude, and of excluding some whom we ought to include. An element of arbitrariness is necessarily inherent in every definition which we can possibly frame. We have seen that the authors of the Act of 1859, both when they spoke of a resident raiyat, and when they laid down the rule as to twelve-years' occupancy, did not mean to create new rights, but to describe existing rights, and that neither the phrase which they rejected, nor the rule which they ultimately adopted, precisely hit the mark. We are in the same difficulty now as the legislature were in then; and, whilst admitting that the definition which was then adopted is imperfect, and that any definition which we can devise now must be to some extent artificial, our object should be so to frame our legislation as to depart, as little as possible, from the notions and distinctions which are already established in the country and familiar to the people.

"Now, we find that there are two distinctions long and deeply engrained in the mind of the agricultural population of Bengal. The one is the distinction between the khudkasht raiyat and the paikasht raiyat,—the cultivator who, wherever may have been his place of residence, whatever may have been the length of time during which he had held any particular piece of land, was recognized as being in some sense permanently settled in a particular locality, and as having substantial, though imperfectly defined, rights in the land situate within that locality; and, on the other hand, the cultivator who was never fully recognized as properly belonging to, or sharing the rights of, the agricultural community, and always retained the character of an outsider, or almost an interloper.

"The other is the distinction between that portion of the land which, under whatever

circumstances it was acquired or appropriated, and by whatever denomination it was known, whether as sír, khámár, nij-jote or zeraat, was recognized as being in a special and exclusive sense the private property of the zamíndár, as distinguished from all the rest of the cultivated or cultivable area, which may be called raiyattí land, and in respect of which the zamíndár's rights were merely to receive a share of the produce or its equivalent in money.

"The first distinction is a distinction between two classes of cultivators; the second distinction is a distinction between two classes of land.

"Now, the legislation of 1859 proceeded on the first of these distinctions, and endeavoured though as we have seen with imperfect success, to define and protect the rights of the khud-kasht or settled raiyat. But there is a great deal to be said for basing legislation on the second of these distinctions. We might, I think, very fairly say to the zamíndár—'This private, sír or khámár land is, and shall be, your own in a special and exclusive sense. You may do as you like with it: keep it in hand, or let it out precisely as you please. Of this land you shall be not only the actual but the absolute or exclusive proprietor. But as to the raiyattí land, there your proprietary rights are, and shall be, limited by the rights of the occupying cultivators. You shall have your due share of the produce, but we will adhere to the old law and custom of the country, and prevent you from interfering with the occupier as long as he pays rent at the established rate.' The great advantage of basing the law on this distinction would be, that it would entirely get rid of the elements of irritation and conflict necessarily inherent in any rule which declares that rights shall be acquired by occupation during a specified period of time. It will be seen, from the papers which we shall lay before you, that the Government of India at one time proposed to legislate on these lines, but in deference to very high authority, and to the suggestion that such legislation would involve too serious a departure from the principles contained in the Act of 1859, we have ultimately determined to embody in our Bill the twelve-years' rule, with modifications which I will presently explain.

"I am now in a position to describe the principal provisions of the Bill which I am asking for leave to introduce. The Bill will be accompanied by a popular commentary in the shape of a full Statement of Objects and Reasons, and therefore I need not do more than dwell on its more important features.

"In the first place, it is not intended, and does not profess, to be a complete or exhaustive code of the law of landlord and tenant. It is merely a Bill to amend and consolidate certain enactments relating to that subject. It does not attempt to embody all the rules of the common law or the results of judicial decisions, and it expressly saves custom.

"The most important sections of the Bill are those which relate to the raiyat with occupancy-rights, but before reaching that point the Bill deals with two other subjects to which I must shortly refer.

"The first of these is the distinction between the khámár or private land, and raiyattí land or land destined for occupation by raiyats.

"The importance of this distinction arises chiefly from the circumstance that raiyats occupying land of the latter class will, under the Bill, enjoy a much larger measure of protection than those occupying land of the former class. Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country under the existing law to get into their own hands as large an amount of the raiyattí land as possible and convert it into khámár land, we have framed our definition so as to make it clear that the existing stock of khámár land cannot hereafter be increased, and have further enacted that all land which is not khámár land shall be deemed to be raiyattí land, and that all land shall be presumed to be raiyattí land until the contrary is proved.

"In Bihár, owing to the large extent of khámár, or, as it is there termed, "zeraat," land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance. Accordingly, we have further provided for making, in some parts of the province, a complete survey and record of the existing khámár or zeraat, in order to preclude all possibility of future disputes on the point.

"Next in order comes a chapter dealing with the class of persons who are described in the Bill as tenure-holders, and who are practically middlemen between the zamíndár or principal rent-receiver and the cultivator. They do not, as a rule, cultivate the land themselves, but collect the rents and pay over to the superior proprietor an annual sum, which may be either fixed or liable to enhancement from time to time. There may be several degrees of such middlemen each receiving rent from a person below him and paying rent to a person above him. And the amount of rent payable by them is determined by considerations similar to those which apply to the rent payable by an occupancy-raiyat.

"In dealing with this class of persons we have followed very closely the recommendations of the Rent Commission. They proposed to enact that, in the cases where the rent of a tenure or under-tenure is liable to enhancement (there are many cases in which it is not so liable), it may be enhanced up to the limit of the customary rate payable by persons holding similar tenure or under-tenures in the vicinity, or, where no such customary rate exists, up to such limit as to the Court may appear fair and equitable, but so that the profit of the tenure-holder shall not, in the absence of special circumstances, be more than thirty per cent. of the balance which remains after deducting from the gross rents payable to him the expenses of collecting those rents. And to prevent the power of enhancement from working hardship, they proposed to provide that the enhanced rent should not in any case be more than double the previous rent: that the enhancement might, in certain cases, be made to take effect gradually; and that rent once enhanced should not be altered for ten years unless on account of alluvion or diluvion.

"On these and other points we have adopted their proposals, with certain modifications of detail. Thus, we have declared a permanent tenure to be heritable, devisable and transferable, and we have enacted that the holder of such a tenure shall not be ejected by his landlord except under a decree of Court passed on the ground that he has broken a condition on breach of which he is, under a written contract between himself and his landlord, liable to be ejected. It will be borne in mind that his interest is liable to sale, and in some cases to sale by a summary process. Lastly, we have provided for the registration in the landlord's register of all successions to, and transfers of, these kinds of interest.

"The best known and most important of these intermediate interests are those known as patní tenures. They are held at a rent fixed in perpetuity, but, in case of default, they are, under one of the old Regulations, liable to summary sale by a special process. We have devoted a special chapter to this class of tenures, but in dealing with them we have left the law substantially unchanged. We have not overlooked the various proposals which have been made for the amendment of the summary sale procedure, but we have thought that, as they touch only matters of detail relating to an institution of a very special nature, they would be best considered at the Select Committee stage of the Bill, when it is hoped that it may be found possible to simplify the form of the law very much without materially changing its substance. In the mean time, we have thrown the existing enactments into a schedule.

"We now come to the raiyat. I have said that there is considerable difficulty in defining the raiyat, and there is one particular class of raiyats, namely, those holding at fixed and unalterable rates, whom we have found it convenient to take out of the category of raiyats and include in the definition of tenure-holders. We have done this mainly for convenience of drafting, but we believe that the effect of our having done it will be of little practical importance, inasmuch as these tenants are, to all practical intents and purposes, on the same footing as tenure-holders.

'Setting these aside, who is a raiyat? We have been unable to frame more than a negative and incomplete definition of him. We propose, following the Bill prepared by the Rent Commission, to limit the term to tenants who hold land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes. We are quite aware that cases may occur near the line of separation between the different classes interested in the land, in which a doubt will arise whether a tenant is a tenure-holder, a raiyat or a person holding under a raiyat. We believe, however, that this distinction is generally well understood, and that, save in exceptional cases, no difficulty will arise. However this may be, no complete definition has as yet been suggested which would not be certain to give rise to difficulties greater than those which it is intended to remove. If anybody can suggest a better definition than ours, we will gladly adopt it.

"I have said that one of the objects of our legislation is to give reasonable protection to the raiyats as a class, and in particular to recognise and confirm that right of occupancy conditional on payment of rent at the established rate which formerly appertained to the khudkasht, settled or permanent raiyat. Who, then, is the settled raiyat? We have seen that the Act of 1859 adopted as a test for determining this question the occupancy of land for twelve years. It has been held by the highest judicial authority that the provisions of the Act, with respect to the establishment of the right of occupancy, should be construed as cumulative, and not as exhaustive or exclusive of all other modes of establishing that right; but, as a matter of fact, the Act has come to be regarded as a code complete in itself, and as superseding all other modes of establishing the right. Its effect has consequently been to injure seriously the rights of the old established raiyats by throwing on them the burden of proving, not merely that they have held for twelve years in the village or estate, but further, that they have so held in every one of the particular fields or plots in respect of which they claim to have rights of occupancy—a burden which, it need hardly be said, it is impossible for them, in the absence of any trustworthy agricultural records, to discharge. And, as regards the acquisition of rights of occupancy by new comers, a matter which is always regarded as absolutely necessary for the prosperity of the agriculturist class in this country, it becomes almost impossible under a law which enables the landlord to prevent it by the simple device of shifting the tenant from one holding to another before the period of twelve years has run out.

"It is unnecessary that I should state on the present occasion the various remedies which have been proposed for these evils. They will be found described and discussed in paragraph 61 of one of the despatches which will be published—the despatch of the Government of India to the Secretary of State, dated 21st March, 1882. It is enough to state the amendment of the law which we have, after a very full discussion of the question, resolved to propose. That amendment follows, with certain modifications, a suggestion of the Famine Commissioners, and consists in making the acquisition of the status of khudkasht raiyat, or, as he is termed in the Bill, 'the settled raiyat,' depend not on the holding of one and the same plot of land for twelve years, but on the holding of any raiyattí land (whether the same or not it does not matter) in the same village or estate for a period of twelve years whether before or after the passing of the Act. The raiyat may, by ceasing for one year to hold land as a raiyat in the village or estate, lose the status so acquired; but while it continues to adhere to him, he will, notwithstanding any contract to the contrary, be deemed to have acquired a right of occupancy in any raiyattí land held by him as a raiyat in the village or estate after this day—the 2nd of March, 1883. No one can acquire the status of settled raiyat, and the occupancy-right which is attached to it, unless he has been a landholder, or he and his ancestors before him have been landholders, for at least twelve years in the same village or estate. Thus, mere squatters and nomads are effectually excluded. I should add that, in order to obviate the effect which the

minute partitions of estates, so common of late in certain parts of the country, would have in reducing the area in respect of which a settled raiyat of an estate would enjoy his status as such, it is in effect provided that the estate shall, for the purposes of this portion of the Act, be taken to be the estate as it would have existed if no partition had taken place since the 1st of January, 1853. All these provisions apply only to raiyattí land, not to khámár land.

"And we preserve the rights of existing occupancy-tenants by providing that every raiyat who immediately before the commencement of the Act, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when the Act comes into force become an occupancy-raiyat of that land for the purposes of the Act.

"Now, we do not anticipate that these provisions will increase materially the area at present subject to occupancy-rights; indeed, if the statement which has been made by a high authority, that 90 per cent. of the raiyats in Bengal already have that right, is correct, any such increase would scarcely be possible; but what we hope for is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined, and secondly, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat.

"It will be observed from what I have said that a right of occupancy is to be acquired by a settled raiyat holding raiyattí land '*notwithstanding any contract to the contrary.*' We consider it essential to carry the enactment to this extent. To quote again from the despatch of the Government of India to which I have just referred: 'Such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government but also of the almost unanimous opinions of the Bengal officers.'

"I was not a party to this despatch, but I desire to express my entire concurrence with the opinion therein expressed as to the absolute necessity of preventing our legislation from being overridden by contract. We are fully justified in directing our Courts not to enforce contracts, the clear and manifest intention of which is to defeat the intentions of the legislature. On a matter of this kind an ounce of fact is worth a ton of theory; and I will try to give you an ounce of fact—a sample ounce—in the form of a so-called contract which, as I am credibly informed, has been imposed by a Bengal zamíndár on a Bengal raiyat:—

'(1) *Translation of the kabúliyat said to have been executed.*

To

Zamíndár.

I, son of , resident of pargana , sub-registry and police-station of , cultivator, do hereby execute this kabúliyat.

I take the lease of bíghás of land, more or less, and yielding different rate of rents of village and, mentioned in the schedule below, * * * * * * * * * * * an annual jama of Rs. . I will pay the rent at your kachahrí * * according to monthly* equal instalments noted at the foot. If I fail to pay the rent on due date, I will pay interest at the rate of† two pies per rupee per mensem till date of realisation. I will not raise any objection to the payment of rent on the score of inundation, drought, fallows or any other cause I will not delay to pay the rent. I will cultivate the land with my own hands, keeping the boundary intact in accordance with Your Honour's wish. You and your heirs are at liberty to enter into possession of the land if it is required by you and them. I and my heirs will never acquire a right of occupancy in land. I will not sub-let, establish háts or bázárs, erect buildings, excavate tanks, make brick-fields, plant bamboo-clumps‡ and gardens, settle with korfa raiyats, or transfer or alienate the lands. If I do any of these acts, I and my heirs and assigns will be responsible for any damage that may thereby accrue. I and my heirs will pay, in addition to the rent, road-cess,§ public works cess,‖ zamíndárí dák cess,¶ and any other cess which Government may levy in future, together with any cess** which you may levy. I and my heirs shall enjoy the fruits only of existing and future trees on the land (*i.e.*, such trees as I and my heirs may plant, or may have been already planted by me at your instance, and such as may be planted hereafter at the instance of you and your heirs). I will not cut any trees whatever If required by you and your heirs, you are at liberty to cut trees on payment of one-fourth of the price of wood-†† I will not raise any objection for abatement of rent on that score. If I do any damage to the existing bamboo-clumps, I and my heirs will be responsible. I will pay every kowri of the rent by the end of Chaitra. If I

* Monthly instalments are oppressive They drive the raiyat to the money-lender before the harvest, and they enable zamíndars to wrong the raiyat by bringing suits every month and saddling the raiyat with costs

† *i. e.*, 6 annas per rupee per annum, or $\frac{6}{16}$ × 100 per cent = 37½ per cent.

‡ Bamboo-clumps are real "necessaries" for a raiyat.

§ By section 21, Act X of 1871, the raiyat is only bound to pay half the road-cess. This is to exact the whole from him

‖ This is to avoid section 5, Act II of 1878, which only throws one-half public-works-cess on the raiyat

¶ By section 3, Act VIII of 1862, all the dák cess is payable by the zamíndar. By this he throws them on the raiyat.

** See Sections 52, 55, Regulation VIII of 1793, and Section 11, Act VIII of 1869. The imposition of such cesses is absolutely illegal.

†† One-fourth as wood Not the value, or even one-fourth the value, of the tree

and my heirs fall into arrears, you and your heirs are at liberty to enter into khás possession, and will make a separate settlement as you and your heirs think fit, and I and my heirs will not raise any objection. I and my heirs will not claim any compensation* that may be awarded under Act X of 1870 and under any other law. To the above effect I execute at my free will this kabúliyat.

* *i.e.*, if the land is taken up for public purposes, the zamíndár is to get the price paid by Government; the raiyat nothing.

'(2) *Pattá.*

Rent-roll of raiyat, of village * * pargana* of zamíndárí lot bearing touzi No. * * zilla * * annual jama * * paddy, &c., village * *, land * * rent and paddy, &c.

You shall enjoy the land paying the rent from Punya day to the end of the year, and having rights as per kabúliyat.'

*N.B.*—The kabúliyat is given by the raiyat and remains with the zamíndár. The patta is given by the zamíndár and remains with the raiyat. This *latter* document gives no details, so that the ignorant tenant never has an opportunity of understanding the nature of his rights and obligations; all these are only entered in the *kabúliyat*, which is in the custody of the zamíndár.

"This is the kind of document—contract I cannot call it—by which we do not intend that our legislation should be overridden.

"So much as to the mode in which the occupancy-right is to be acquired. Next, as to the incidents of the right when obtained. The most important of these are collected and enumerated in one of the sections of the Bill, which provides that they shall attach to the tenancy notwithstanding any contract to the contrary. They are briefly as follows:—

(1) the raiyat may use the land in any manner which does not render it unfit for the purposes of the tenancy;
(2) he may make improvements on it as provided by the Bill;
(3) he must pay rent at fair and equitable rates as determined by the Bill;
(4) he cannot be ejected except under a decree passed for breach of certain conditions, or for using the land in such a way as to render it unfit for the purposes of the tenancy;
(5) he may sub-let the land;
(6) his interest is to be transferable, subject to certain rights reserved to the landlord; and
(7) his interest is to descend as if it were land.

"It will be seen that these rights include the rights commonly known in England and Ireland as three F's., fixity of tenure, fair rent and free sale. I will touch first on the last of these three rights—the right of transfer.

"The question whether the right of occupancy should be made by express enactment freely transferable everywhere, as it is at present held to be by custom throughout a very large portion of the area to which the Bill applies, has been most fully and carefully considered. It has to be looked at from two points of view, namely, first, from the point of view of the landlord, and secondly, with reference to the interests of the tenant.

"From the former point of view the question presents comparatively little difficulty. The landlord is concerned only to see that we do not allow an objectionable tenant to be forced on him against his will, and this we can readily guard against by giving him a right of pre-emption, or something equivalent to a right of pre-emption, in every case of transfer. We have accordingly provided that, in cases of voluntary sale, gift or bequest, the landlord shall have a right to purchase at a price to be fixed by the Civil Court; that in the case of a sale in execution of a decree, when the landlord and any other person bid the same amount, the landlord shall have the right of pre-emption; and that, when an order is passed for foreclosing a mortgage of an occupancy-right, the landlord shall be allowed an opportunity of paying in the amount of the mortgage-debt and taking the place of the mortgagee. The only doubt that has been felt about these provisions is whether, in the case of a voluntary sale, the landlord should not be required, if he exercised his right of pre-emption, to pay the price at which the raiyat has actually agreed to sell the occupancy-right instead of a price to be fixed by the Court; but, on considering the difficulties by which the right of pre-emption would be clogged in cases of collusion between the vendor and purchaser, and in cases in which a spiteful neighbour might be willing to pay an exorbitant sum for an occupancy-right with a view to harassing the landlord, we have thought it best to put the case of voluntary sale on the same footing as those of gift and bequest.

"Looking at the question of transferability next from the point of view of the occupancy-raiyat's interest, the Local Government and the Government of India have come to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability which the prevailing customs show to exist in rights of this class in almost all parts of the country. The existence of such a tendency indicates—what, indeed, is clear from other evidence—that those most concerned regard the quality of transferability as an important incident of the right; and it cannot be doubted that the enactment of a law absolutely forbidding transfer would, even if it saved existing customs, be regarded as a hardship. I may add that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance.

"That the powers of transferring and sub-letting which the Bill recognises may in time lead to a state of things in which the great bulk of the actual cultivators would be not occupancy-raiyats but under-raiyats, with but little protection from the law, is indeed within the

range of possibility; but, if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it. There is nothing in the present Bill which ought in any way to hamper them in doing so—nothing to affect the principle that, in an agricultural country like India, the great mass of the actual cultivators of the soil, whoever they may be, and however they may have come into the possession of the land, must be protected by the law.

"It may be asked, what happens if a landlord, by way of pre-emption or otherwise, acquires an occupancy-right in his own land. The answer is, any tenant who subsequently takes the land from him is to have a right of occupancy in it. There is nothing in the Bill to prevent a landlord so acquiring an occupancy-right in land for keeping the land in his own hands and cultivating it by his servants or by hired labourers. All we propose to enact is that, if he chooses to let it to a tenant, that tenant shall at once acquire an occupancy-right. We consider this necessary in order to guard against the possibility of a landlord buying up on a great scale the occupancy-rights existing on his estate with a view to putting non-occupancy raiyats on the land. To a landlord who buys an occupancy-right, as contemplated by the pre-emption sections of the Bill, merely with a view to excluding an intending purchaser whom he objects to have as his tenant, there would be no appreciable hardship in the restriction.

"So much for free sale: now as to fair rents. It will be remembered that, under Act X of 1859, there were, putting aside the question of alterations in area, which we deal with separately, only two grounds on which the rent of an occupancy-tenant could be enhanced:

*1st*, that the rate of rent was below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent; and

*2nd*, that the value of the produce or productive power of the land had been increased otherwise than by the agency or at the expense of the raiyat.

"And we have seen that, in the Great Rent Case, the Court ruled that, where enhancement was claimed on the second of these grounds, the rule of proportion should be observed, namely, that the enhanced rent should bear to the previous rent the same ratio that the increased value of the produce or productive power bears to the value or power at the time when the previous rate was fixed.

"Now, whatever may be said for the rule of proportion on theoretical grounds,—and there is much to be said for it,—there is a general admission that in practice it has proved unworkable by the Courts. It has proved unworkable, because it throws on the Court in each individual case the necessity of undertaking elaborate and laborious inquiries into economical questions with which the Court is altogether incompetent to deal, and which have reference not merely to the present time but also to past and possibly very remote times, for which no such evidence as could be acted on by a Court of Justice is likely to be forthcoming. Moreover, it necessitates enquiries, which are of such a nature that they could with advantage be undertaken only generally on a great scale and once for all, being, instead of this, undertaken over and over again in a most imperfect and unsatisfactory manner in individual cases.

"The result of this is that, though the right of the landlord to enhance is distinctly recognized by the law, and though definite rules are laid down for its enforcement, the law has become to a great extent a dead letter.

"The most important object of our proposals on this head is, while guarding and limiting the right to enhance in certain respects, to put it on such a footing that it will be readily enforceable in practice; and the chief means adopted for attaining this object is that of separating off the statistical and economical inquiries of a general nature to which I have just referred, and providing for their being undertaken once for all on a large scale by Revenue-officers.

"We begin by providing that, except on account of an addition to the area of a holding by alluvion, a money-rent payable by an occupancy-raiyat shall not be enhanced except by a decree of a Civil Court, or by an approved and registered contract.

"I will speak first of enhancement by contract. We consider, for reasons which I have already mentioned, that it would be destructive of the objects of the Bill if occupancy-tenants were left perfectly free to deprive themselves by contract, or, I should rather say, by instruments having the external form of contracts, of the right to hold at fair and equitable rates secured to them by the law.

"But, on the other hand, we believe that there are cases in which both landlord and tenant are willing to agree to a reasonable enhancement of rent, and we think it hard that in such cases they should be driven against the will of both into a lawsuit. We have accordingly adopted a middle course by providing that a money-rent payable by an occupancy-raiyat may be enhanced by a contract in writing, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf; we have directed that a Revenue-officer shall not approve or register such a contract until he has satisfied himself that it is fair and equitable; and we do not allow him to register any contract by which a raiyat engages to pay a rent more than six annas in the rupee higher than the existing rent, or more than one-fifth of the estimated annual value of the gross produce of the land.

"Passing now to enhancement by decree of a Civil Court, we proceed on the assumption that there are, at least in some parts of the country, certain rates of rent generally recognized as the rates payable by occupancy-tenants for the various classes of land held by them. Where this is the case, we presume that it would not be very difficult for a Revenue-officer to ascertain those rates, and then, starting from them as a basis, and taking into account such changes in

the productive powers of the soil and in the prices of produce as may have occurred since they were fixed, to prepare tables of the enhanced rates which, subject to allowance in exceptional cases, might fairly and equitably be demanded by the landlord for each class of land under the existing conditions. The Revenue-officer might further show in his tables the average gross produce of each class of land and its estimated value. Supposing this to be done, the Civil Courts would be relieved almost entirely of those economical and statistical enquiries which at present are involved in enhancement-suits. They would accept the rates and produce statistics shown in the tables as *primâ facie* correct for all lands of the class to which the tables referred, and might restrict themselves to considering the comparatively simple and limited questions as to whether the particular lands in question in the suit belonged to the class alleged, and whether there were any exceptional circumstances connected with them which would require the rent to be fixed at a different rate from that set down in the table.

"We are, of course, well aware that there would be many parts of the country for which, owing to the non-existence of recognized rates of rent, or to the great varieties of the soil, no such tables could be prepared, and further, that, even where it is possible to prepare such tables, their preparation must be a work of time. Accordingly, we have drawn our Bill so as to provide for two possible classes of cases, and for two kinds of enhancement-suits: suits to enhance money-rents where a Table of Rates has been prepared, and suits where a Table of Rates has not been prepared.

"It will be convenient to deal, first, with the latter set of provisions. The cases in which a suit may be brought to enhance the money-rent of an occupancy-holding situated in a tract for which a Table of Rates has not been prepared are in the main the same as those provided for in Act X of 1859, the only difference of sufficient importance to call for notice here being that, for the purpose of estimating the increase in the productive powers of the land, or in prices on which a right to enhance depends, the Court is not compelled, as under the present law, to look to the time at which the rent was fixed, but, when that time cannot be ascertained (as it frequently cannot), or when the productive power and the prices prevailing at that time are undiscoverable, may take, for the purposes of comparison, any other time which may appear to it fair and equitable.

"We have endeavoured to supply a defect in Act X of 1859 by fixing the limits up to which the Court is to enhance in cases in which the enhancement is claimed on the ground of an increase in the productive powers of the land or of prices. We provide that, if the increase has been effected wholly by the agency or at the expense of the landlord, he shall be entitled to the whole benefit of it; that, if it has been effected partly by the agency or at the expense of the landlord and partly by the agency or at the expense of the tenant, the benefit shall be divided between them in such shares as, having regard to all the circumstances of the case, the Court thinks fair and reasonable; and that, if it is not proved that the increase has been effected by the agency or at the expense, either of the landlord or of the tenant, each of them shall be entitled to one-half the benefit: provided in this last case that the enhanced rent shall not bear to the previous rent a higher proportion than the increased productive power or increased prices bear to the former productive powers or former prices, as the case may be. Thus the rule of proportion, instead of being, as it is at present, under the decision in the Great Rent Case, the measure of enhancement in all cases, will merely supply a maximum limit in one of three possible cases. As it is not apprehended that landlords will often seek to press their rights of enhancement to the full extent, it seems unlikely that it will give rise to any considerable difficulty.

"And, lastly, we have fixed a maximum beyond which rent cannot be enhanced in any case. My hon'ble colleague, Mr. Kristodás Pál, has, in one of his published papers, remarked on the necessity of allowing the raiyat a sufficient margin for cultivation and maintenance, and has expressed an opinion that, if the landlord's share of the gross produce were fixed at more than one-fourth, or 25 per cent., it would trench upon the very means of subsistence of the raiyat—would, in fact, be a starvation-rent. Now, it is not for the interest either of landlord or of tenant that starvation-rents should be recoverable; and accordingly we have limited the share of the gross produce which the landlord can take by means of an enhanced rent. We had originally proposed, following the recommendations of the Rent Commission, to fix the maximum limit at one-fourth, or 25 per cent.; but my friend, the Lieutenant-Governor, has recently obtained evidence tending to show that this limit would in some parts of the country be ruinously high; and accordingly we have, at his instance, altered it to one-fifth, or 20 per cent.

"Coming next to the scheme for enhancement by means of a Table of Rates, we have empowered the Local Government to direct a Revenue-officer to prepare for any local area, with the aid of assessors, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land, and the average value of that produce. The land is to be classified according to the nature of the soil, situation, means of irrigation and other like considerations; and in fixing the rates for each class regard is to be had—

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;

(*b*) to the value of the average gross produce of land of that class, and the cost of raising that produce about the time those rates were fixed, or, where these matters cannot be ascertained for that time, about such other time as it may be fair and equitable to take for the purpose of comparison;

(c) to the value of the average gross produce, and the cost of raising that produce at the time the table is prepared; and

(d) to the following rule, namely, that, where the rate of rent for any class of land is raised on account of an increase in the value of the produce, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

"And no rate is to be fixed so as to exceed the share of the gross produce to which I have already referred.

"The table will be in force for such period, not less than 10 or more than 30 years, as the Local Government may direct, and while it remains in force it will be conclusive evidence—

(a) that, except in two exceptional classes of cases, the rates shown in it for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies; and

(b) that the statistics of gross produce and value given in the table are correct.

"The Bill lays down rules for the guidance of a Court in suits instituted to enhance the rent of an occupancy-raiyat in a local area for which a Table of Rates has been prepared; and a glance at these rules will show what an important simplification of the work of the Court will be effected by the table. The general rule is that the Court shall enhance up to the rate shown in the table for the class of land in question, or, where maximum and minimum rates are shown for land of that class, as will occasionally be the case, to such rate, not higher than the maximum or lower than the minimum, as it thinks fit. It is only in certain exceptional cases that the Court will be required to go behind the rates. Those exceptional cases are of two classes:

"The first class comprises cases which may be described, with sufficient accuracy for my present purpose, as cases in which, owing to some improvement having been effected or having taken place in reference to the land since the commencement of the tenancy, the land has been raised from a lower to a higher class of the table. In these cases, the benefit of the improvement is appropriated to landlord or tenant, or apportioned between them on the principle which I have already referred to as applicable in other enhancement-suits.

"The other class of exceptional cases in which the Court will have to go behind the rates are cases in which the raiyat proves that, by contract or by custom or on some equitable ground, he is entitled to hold at a rate lower than that fixed by the table for land of the class to which his belongs; and, in cases of this class, the Court is required to fix the rent at the lower rate at which the raiyat proves that he is entitled to hold.

"I need only add that all suits for enhancement, whether under a Table of Rates or otherwise, are made subject to the three rules already referred to under the head of tenures, namely, that a rent shall not be enhanced so as to be more than double the previous rent; that the Court may order the enhancement to take effect by degrees for any number of years not exceeding five; and that, when rent has been enhanced, it shall not be again enhanced for 10 years. We consider that rules to this effect are necessary for the purpose of preventing sudden and ruinous enhancements, and vexatiously frequent alterations of rent.

"How far it will be possible to give effect to the provisions with respect to the preparation of a Table of Rates I will not venture to predict. The members of Rent Law Commission appear to have entertained great hopes of those provisions being largely used, and they seem to have thought that, in some cases, if the rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. On the other hand, the result of recent inquiries would seem to show that, in some parts of the country at least, the rates vary so much from holding to holding as to render the preparation of a table impossible or practically useless. It must, however, be pointed out that it will not follow that, because a table of rates has not been or cannot be prepared for a local area, the landlords of that area will necessarily be reduced to the ordinary procedure by civil suit. They will, in many cases, be able to invoke the aid of a Revenue-officer for the settlement of their rents under certain provisions of the Bill, which I will notice in their proper place.

"The provisions for the enhancement of the rent payable by an occupancy-tenant are balanced by certain provisions for its reduction. The cases in which a claim for reduction is allowed are, with certain modifications of detail which it is unnecessary for me to notice, the same as under the existing law; that is to say, a reduction can be claimed only where there has been a decrease of productive power or of prices; and such cases are so rare that it has been thought unnecessary to lay down any elaborate rules for their treatment. We, therefore, simply provide that, when a case for reduction is made out, the Court may direct such reduction as it thinks fair and equitable.

"On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the Table of Rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Bihár, where we learn from recent reports that the average rates all round have been enhanced by 500 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a readjustment of the rates of rent, is a separate and difficult

question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill.

"These are the most important of the proposals of the Bill with respect to the rent of occupancy-tenants. I will not touch on the provisions which relate to the regulation and commutation of rent payable in kind, important as those provisions are, or on the sections which relate to the rights of a settled raiyat in his bastu or homestead land, but will pass on at once to the chapter dealing with what are called in the Bill ordinary raiyats, that is to say, raiyats holding raiyattí land, but not having a right of occupancy in respect of it. If we are to accept as approximately accurate the statement, for which I believe my honourable colleague Mr. Kristodás Pál is responsible, that some 90 per cent. of the raiyats of Bengal already have occupancy-rights, this class will not be numerous. Now, under the existing law as stated in Article 51 of Mr. Field's Digest, the rent of a raiyat belonging to this class can be enhanced only after service of a notice of enhancement; and if, after receiving this notice, the raiyat elects to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent for it. And the principle on which we have proceeded in dealing with tenants of this class is that, while it is desirable to interfere as little as possible between them and their landlords, they should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and that the acquisition by them of the status of settled raiyats should be facilitated in every reasonable way.

"We accordingly provide that, subject to a certain maximum, which has been fixed for the rents of all raiyats and under-raiyats, and to which I shall presently refer, an ordinary raiyat shall pay such rent as may from time to time be fixed by agreement between him and his landlord; but, in order to check extravagant enhancements by the landlord, we provide that, if the landlord proposes an enhancement of the rent to which the raiyat does not agree, the landlord shall not eject him without paying him, besides any amount that may be due to him as compensation for improvements under the provisions of the Bill, a further sum by way of compensation for disturbance equal to a certain multiple of the yearly increase of rent demanded. *Ten* times the increase is the amount provided for in the Bill as it stands; but it need hardly be said that a figure of this sort is, at this stage of a Bill, entered only tentatively and subject to future consideration. The object in view is to fix a multiple of the increase high enough to deter the landlord from making an extravagant demand, but not so high that the raiyat would be induced by the prospect of obtaining it to refuse to accede to a reasonable enhancement.

"In addition to this we provide that a landlord shall not eject an ordinary raiyat except

(*a*) for arrears of rent;

(*b*) on the ground that the raiyat has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken some condition on breach of which he is, under the terms of a written contract, liable to be ejected; or

(*c*) that he has refused to agree to an enhancement of rent on which the landlord insists.

"It is in this last case that the provision as to compensation for disturbance will apply.

"I spoke just now of a maximum rate for the rent of all tenants, whether raiyats or holding under-raiyats. I have explained that a raiyat is to be entitled to sub-let. We are well aware of the evils incidental to sub-letting, and of the risk that a tenant holding at favourable rates may, by sub-letting, convert himself into a rack-renting middleman. But the Government of Bengal did not see its way, and we do not see our way, to an absolute prohibition of sub-letting, or to such an upsetting of existing notions as would be involved in conferring the rights which are generally recognized as attaching to the raiyat, on the korfa or under-raiyat, who appears to be little better than a labourer, paying himself out of the produce of the field which he tills, and making over all the rest of that produce to the landlord. Sir Ashley Eden preferred to content himself with imposing some discouragement on sub-letting by limiting the money-rent of all raiyats and under-raiyats not having a right of occupancy to a maximum which he suggested might be fixed at 35 per cent. of the gross produce. This maximum was fixed with reference to the 25 per cent. maximum in the case of occupancy-raiyats; but as we have, at the instance of the present Lieutenant-Governor, proposed to lower the latter maximum to 20 per cent., so we propose to fix the maximum for ordinary raiyats at five-sixteenths or about 30 per cent.

"I have now touched on the most important of those provisions of the Bill which relate specially to particular classes of tenants; but, before leaving this part of the subject, I ought to say a few words about the subject of tenants' improvements, since the right to make improvements has been expressly mentioned as one of those rights which is attached to the status of an occupancy-raiyat.

"The question as to the right of a raiyat to make improvements and to claim compensation for them on ejectment will, if the proposal to make occupancy-rights freely saleable in execution of decree is adopted, be of less importance in Bengal than in some other parts of British India. The great mass of the raiyats having a right of occupancy and not being liable to be ejected except under peculiar circumstances of rare occurrence, and the question of compensation adjusting itself when an occupancy-right is sold in execution of a decree, claims for compensation for improvements will be comparatively few. But the importance, from an economical point of view, of encouraging improvements is so great in this country that special provision has been made for the matter to meet the case of ordinary raiyat[illegible] and such cases as may from time to time occur of occupancy-raiyats being ejected from their [illegible]

"The principle on which the sections of the Bill relating to this subject proceed is that that party to a tenancy whose interest in the land preponderates should have the preferential right to improve and take the full benefit of his improvements; but that, if the party having this preferential right is unable or unwilling to avail himself of it, it should be open to the other party to make an improvement and reap the benefit of it.

"We accordingly confer on an occupancy-raiyat the preferential right to improve, and provide (subject to one exception to be presently noticed) that, if he does not avail himself of this right and the landlord desires to have any improvement made, he may call upon the raiyat to make it, and that, if the raiyat does not within a reasonable time comply with the request, the landlord may make the improvement himself. We enact what may be termed the inverse of these provisions for the case of the ordinary raiyat; that is to say, we give the preferential right to the landlord, and allow the raiyat to improve only if the landlord, on being requested by the raiyat to make an improvement, neglects within a reasonable time to do so.

"We have, however, made an exception to these rules in the case of one sort of improvement, namely, a dwelling-house for the raiyat and his family. We consider that this is an improvement which every raiyat— an ordinary as well as an occupancy-raiyat—should be entitled to make; and we further consider that it is not an improvement which a landlord should be empowered to force on a raiyat against his will. As regards this improvement, accordingly, we provide simply that any raiyat may make it; no right to make it, whether preferential or otherwise, being conferred on the landlord. When a landlord makes an improvement under these sections, he will be entitled to reap the immediate and full benefit of it in the shape of an enhancement of the rent under the provisions of the Bill relating to that subject. When a raiyat makes an improvement under these sections, he will, if ejected, be entitled, subject to certain exceptions which I need not notice now, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold, reap the full benefit of his improvements, inasmuch as his rent cannot be enhanced on account of an improvement made by him. An ordinary raiyat, under similar circumstances, may possibly not be able in all cases to retain the full benefit of his improvements, but the check placed on the landlord by the provisions to which I referred just now will, as a rule, amply protect him in the enjoyment of that benefit.

"We do not think that a raiyat should be allowed to contract himself out of his right to make improvements of the class specified in the Bill; and, accordingly, the Bill makes void all stipulations in contracts providing either that a landlord may prevent a raiyat from improving or eject him for improving, or that a raiyat, when ejected, shall, not be entitled to compensation for improvements.

"The remainder of the Bill is mainly concerned with provisions which apply to all classes of tenants alike.

"The object of some of the most important of these is to remove fertile causes of, or pretexts for, dispute and litigation between landlord and tenant, by providing means for ascertaining and determining the amount of rent payable by the latter to the former, and the dates at which instalments of rent are payable.

"We empower the Board of Revenue to fix the instalments in which rents are to be paid. This power is of considerable importance in the case of raiyats' holdings. Much of the harassment to which the raiyats are subjected is said to arise from the number of instalments in which their rents are payable; and, to remedy this, the Board is empowered, subject to certain reservations regarding agreements entered into, and customs prevailing, before the commencement of the Act, to fix the instalments in which the rents of raiyats are to be payable, so that there may not be more than four in each year.

"We require every landlord to give to a tenant paying him rent a receipt containing much fuller details than those prescribed by the existing law, and to keep a counterpart of every receipt so given; and we provide that, when a receipt does not contain the requisite particulars, it shall be deemed to be an acquittance in full up to date.

"We require every landlord to furnish to his tenant for each agricultural year a detailed statement of the account between them for that year, and to keep a counterpart of every statement so furnished.

"And, following the existing law as to receipts, we impose penal damages for refusal or neglect to give receipts or furnish accounts, and make it an offence punishable with fine to neglect to keep a counterpart as required by the Act.

"We believe that, if these provisions are fully enforced, much advantage will result to both parties. Not only will the tenants be supplied with proper evidence of the payments made by them and of the state of their accounts, but the landlords, if they keep their counterpart statements in a proper manner, will find them useful as evidence before the Courts.

"Among the commonest defences to a suit for arrears of rent are that the tenant has already tendered his rent and that it has been refused, or that the tenant did not know who was entitled to the rent.

"Under the existing law there is but one case in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord and that the landlord has refused to receive it.

"It has been found, however, that this affirmation has become a mere form; and we have thought it better to allow the tenant to deposit his rent whenever he has reason to believe that

the landlord will not receive it. We also think it advisable that a tenant should be allowed to deposit his rent in two other cases, namely—

(1) when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and

(2) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

"This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given a discretion to refuse the deposit if he does not think the circumstances of the case warrant its being made, and a further discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject of course to the right of any person actually entitled to it to recover the amount from the person to whom it is so paid. As regards this last point, however, I should state that the officer will have power to retain the deposit if he thinks fit, pending the decision of the Civil Court as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled.

"There are a large number of other provisions which fall within this part of the Bill, such as the provision for the division or appraisement of crops where rent is paid in kind, the provisions for measurement of the land, and the like; but I need not refer to them now, as they will be found in most cases to follow closely the proposals of the Rent Commission, although in one or two cases we have generalized provisions which had been made specially applicable to Bihár.

"Passing over this class of provisions, I proceed to the further proposals which we have made for supplementing, by the action of the executive authorities, the powers of the Court with respect to the settlement of rents.

"I have already expressed my apprehension that in many parts of the country the framing of a Table of Rates will be impossible. I should add that, in many instances, the mere framing of a Table of Rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and, with a view to provide such a remedy, we have inserted in the Bill a chapter which is entitled *Of the Settlement of Rents by a Revenue-officer.*

"There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error as to the quality of the soil, the estimated amount of the produce, or some other similar matter with which the Revenue-authorities conducting their inquiries on a great scale are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words, an important portion of the work, after being done by those authorities who are most competent to perform it, is liable to be pulled to pieces by another set of authorities who are far less competent to perform it. The enormous amount of unnecessary expense, trouble and vexation which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that, out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine, and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

"The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

(*a*) when a large proportion of the tenants or of the landlords desire that it should be applied, and

(*b*) when a resort to it is likely to settle or avert a serious dispute existing or likely to arise between landlords and tenants generally.

It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

"When the rents to be settled are rents which are liable to enhancement or reduction by a Court, they will be *fixed* according to the principles embodied in the Bill, and so that no rent shall exceed the maximum prescribed in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are ascertained and recorded under Regulation VII of 1822.

"The Revenue-officer, having settled the rents, will prepare a jamabandí, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained, and the amount of the rent fixed or ascertained. This jamabandí will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth

the ground on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for ten years.

"While it remains in force it will be conclusive (except as I will presently explain) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

"It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions, as *e.g.*, that of the status of a tenant, which more properly appertain to the jurisdiction of the Civil Courts, and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

"In most cases, he would probably decide the question on such evidence as might be readily available; but, whenever he takes this course, his decision will be liable to be challenged in a Civil Court on the ground—

(*a*) that the tenancy does not exist, or that the tenant is not liable to pay rent, or
(*b*) that the tenant belongs to a class different from that to which he is shown in the jamabandí to belong, or
(*c*) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandí, or
(*d*) that a rent different from that shown in the jamabandí has been fixed by contract.

"We believe that this list exhausts all the matters in regard to which a Civil Court may be regarded as a better tribunal than the Revenue-authorities, and, if this is so, the determinations of the Revenue-authorities in regard to all other matters may safely be made final and conclusive.

"We have by a separate chapter given to a Revenue-officer, acting under instructions from the Local Government, the narrower power not of fixing and settling rents, but merely of ascertaining and recording, within a specified area, existing rights and rates of rent; in other words, of framing what is known in other parts of India as a record-of-rights. The Local Government may apply the provisions of this chapter not only in cases in which it may empower a Revenue-officer to settle rents, but also in any other case in which the Governor General in Council may sanction the application of its provisions.

"I now come to that part of the Bill which deals with the procedure for the recovery of rents, and, in touching on this subject, I cannot express too emphatically my concurrence with the opinions expressed by the Rent Commission as to the extreme danger of summary methods of justice. 'In order that justice may be done,' they remark—

'truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which, by precluding the production of evidence, may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a 'regular suit' to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice, but of choking-off litigation; and we cannot recommend the adoption of any summary procedure for rent-suits which would involve even a partial renewal of it.'

"There is no royal road to the discovery of facts, and most short cuts are mere delusions. Let me illustrate this from an episode in the history of modern Roman law as practised in Germany. The ordinary procedure for determining rights of possession was found to be tedious, and another form of procedure was devised which was supposed to be more expeditious and was called summarium. This, again, was denounced as dilatory, and was superseded by another still more summary form of procedure, which was christened 'summariissimum.' The great jurist Savigny tells us that he once took part as judge in a trial which was being conducted according to the form of procedure known as summariissimum. At the time when he sat, this trial had lasted some twelve years. Several faculties of jurists had delivered their opinion about it, and how much longer it was likely to last it was impossible to say.

"I have studied most, if not all, of the numerous suggestions which have been made for abbreviating the procedure in rent-suits, and I must say that the result is not encouraging. Most of the suggestions are open to one or more fatal objections: either they are based on an obvious fallacy, or they sacrifice substantial justice to despatch, or they proceed on an imperfect and erroneous diagnosis of the disease.

"The fallacy to which I refer is the fallacy of supposing that by shortening your code of procedure you shorten the procedure itself. The Code of Civil Procedure contains a number of provisions which may be useful in certain contingencies, but which are not required, and therefore are not applied, in ordinary cases. By striking out these provisions from a code of procedure for any special subject, such as rent-suits, you materially shorten your law, but you do not shorten by one jot the length of a trial in ordinary cases, and you create opportunities for doubt and delay in exceptional cases.

"The second objection applies to all those numerous suggestions which, however ingeniously they may be disguised, substantially involve a shifting of the burden of proof. Take a common rent-suit. A, the landlord, says that B, the tenant, owes him so much money as

rent. B says that he does not, and the Judge has to decide which is right. Now, it would be extremely convenient to A if he could have the money which he claims until B proves that it is not due. Possession, we all know, is nine points of the law; and the advantages of possession, in cases of disputed rights, have always been appreciated. I was shown the other day a document which forms an amusing illustration of the importance which is attached to possession not merely in rent-suits but in other forms of litigation. It was a notice of appeal in a fine case, and it ran as follows: —

'Your Honour may be right, I may be wrong; I may be right, and Honour wrong: let Honour give me back the fine, and then at Day of Resurrection, when all hearts will be open, if I am wrong, I will most gladly, Sir, return your Honour the money.'

"The appellant in this case has translated into his own artless language the same thought which consciously or unconsciously lies at the root of all proposals to shift the burden of proof in disputed rent-cases.

"But the truth is, that most of the panaceas which have been suggested for protracted rent-suits proceed on an imperfect diagnosis of the disease. They do not go to the root of the matter. The reason why rent-suits are apt to be long and troublesome is not because the procedure is defective, but because the rights involved are obscure and uncertain, and the facts are difficult to ascertain. No amendments of procedure will cure these evils. What are the features of an ordinary rent-suit? There is nothing mysterious or exceptional about it; nothing which requires the application to it of principles different from those which are applicable to an ordinary demand. It is desirable that not only rent-suits but all kinds of suits should be as short and simple as is compatible with the due administration of justice: it is not desirable that a rent-suit more than any other suit should be simplified at the expense of justice. Take the course of an ordinary suit for arrears of rent. A sues B for a specified sum of money which he claims to be due from B to A. He must, as in the case of other money-claims, satisfy the Court on three points: first, that the amount which he claims is actually due; secondly, that he is the person entitled to the money; and thirdly, that the defendant is the person liable to pay the money. The defendant either appears and pleads, or he does not. If he appears, he usually raises one of three pleas: either that the amount claimed is excessive, or that the amount claimed has already been paid in whole or in part, or that the plaintiff is not the person entitled to the amount claimed. Now, as to the first plea, I believe there is no reason for doubting that it is often well-founded, and that a suit for arrears is in many cases a suit for enhancement in disguise. But, if a landlord wishes to avoid being harassed either with this plea or with the plea of payment, the remedy is in his own hands. He should keep his accounts and receipts in such form and with such regularity as would justify a Court in accepting them as evidence without suspicion. As for the plea under which a landlord's title is disputed, there is no doubt that it raises very difficult questions, but I suppose no one would seriously argue that a defendant is not justified in raising it, when it can be raised in good faith; and it is quite certain that no tinkering of the Code of Civil Procedure will facilitate the proof of a landlord's title. There is, indeed, one mode in which that proof might be facilitated, and it is a mode which we have been recommended by high authority to adopt, and that is, the establishment of a general register of titles. Such a register, if it is to be of much use and to effect much more than is effected under the present system of registration, must, I take it, include all subordinate interests in land. But the preparation of such a register would be an expensive and tedious as well as a formidable task; and I do not know that either landlords or tenants have expressed any strong desire that it should be undertaken, or would welcome the increased taxation which it might not improbably involve.

"So much for the cases in which the defendant opposes and defends his case. But he very often allows judgment to go by default, and in such cases the plaintiff complains that, when he comes to apply for execution, he is stopped by the plea that the summons in the suit has not been duly served. Well, it is very hard on a plaintiff that he should be stopped by a plea of this kind, when it is put in merely for purposes of delay. But it is equally hard on a defendant that he should be sold up without an opportunity of making his defence. In all matters relating to the service of legal notices and processes in this country, there is, I fear, a great deal of negligence and dishonesty, but there is no reason why we should assume that this negligence or dishonesty is always on the side of the defendant; and there is no sound reason why the rules as to the mode of effecting service, which have been found necessary and sufficient in other cases, should be dispensed with in the case of rent-suits.

"I have touched on these points not for the purpose of showing that the existing procedure is incapable of improvement,—for we propose to make certain improvements in it,—but for the purpose of guarding against any exaggerated notions of what may be accomplished in that direction, and of showing that what is really wanted in the interest of the landlord is not so much the simplification of judicial procedure as the extra-judicial ascertainment and simplification of rights.

"What, then, are the remedies which we propose to give to the landlord for the recovery of undisputed rent?

"In the first place, we allow him to exercise the power of distraint in a modified form. The chapter relating to this subject may be said to be the result of a compromise. The Rent Commission, concurring with the Bihár Rent Committee, proposed to abolish the existing law of distraint as an offset of English law, of which the efficiency was impaired by the legislation of 1859, and which had been abused in Bihár and not always applied in a regular manner in other parts of the country. To this strong objections were urged, and the procedure provided by this chapter was then devised by the Government of Bengal as being likely to secure to the

landlords most of the advantages afforded by the existing law, without exposing their tenants to the evils now complained of.

"The modified power of distraint which it is now proposed to allow can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by and be the property of a sub-lessee of the tenant; and it may be exercised, though the produce has been stored, provided it has not passed out of the possession of the cultivator. The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for one month, with a view to the possibility of the owner of the distrained property claiming damages as for a wrongful distraint, and on the expiration of that period it will be paid to the landlord.

"We have inserted in this chapter sections directed against illegal distraint and interference with crops. One of these sections provides in effect that any person who, otherwise than in accordance with the provisions of the Bill or some other enactment for the time being in force, distrains any produce of a tenant's holding, or interferes with the harvesting of a crop, shall be deemed to have committed criminal trespass within the meaning of the Penal Code, and further imposes a penalty, which may extend to three months' imprisonment or two hundred rupees fine, on any person who benefits by, or is interested in, the commission of any such offence if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

"Coming now to the procedure in an ordinary suit, we have endeavoured to embody in the Bill all those modifications of the ordinary procedure proposed by the Rent Commission and the Government of Bengal which seem likely to expedite, in any material way, the disposal of suits between landlords and tenants.

"We have provided that, in such suits, service may be effected by registered letters; that the summons shall, as a rule, be issued for the final disposal of the case; that no written statement shall be filed without the leave of the Court; that the provisions of the Code of Civil Procedure relating to interrogatories, discovery and affidavits shall not apply; that, whether an appeal lies or not, a single memorandum of the substance of the evidence, such as is prescribed by the Code for unappealable cases, shall suffice; that, as a rule, execution may issue on the oral application of the decree-holder at the time the decree is passed; and that the sections of the Code whichenable a judgment-debtor to obtain a suspension of an order made for the sale of his immoveable property, and certain sections which provide for the transfer of decrees to the Collector for execution, shall not apply.

"We have also taken away the right of appeal in petty cases involving no question of title or of a right to enhance or vary rent.

"I should observe that the final jurisdiction in this class of cases will be exercised only by specially selected officers, and that a power of revision is reserved to the District Judge.

"Then, we have added a new section, which is intended for the benefit of a landlord in a suit for an arrear of rent, when, as sometimes happens, the defendant admits that the arrear is due, but pleads that it is due not to the plaintiff but to some rival claimant. In such a case, it seems only reasonable that the tenant should pay the amount of the rent into Court; and the Bill accordingly provides that the Court shall refuse to take cognizance of his plea unless he does so.

"We have also framed a section relating to relief against forfeitures, which is based on a similar section in a recent English Act, the Conveyancing and Law of Property Act, 1881. It enacts that a suit for ejectment of a tenant, on the ground of his having forfeited his interest by breach of a condition or the like, shall not be entertained unless the landlord has given the tenant an opportunity of paying compensation and remedying the breach when it admits of remedy, and that, when a decree is passed in such a suit, it shall not be executed until the defendant is allowed a similar opportunity of repairing or atoning for his wrongful act.

"We hope that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered; but, with the exception of those to which I have referred, none have been suggested which the Government of India would be prepared to accept. As to the possibility of devising any effectual procedure analogous to that employed in the case of negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies, both in this country and elsewhere, is as I have already remarked, against it.

"A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into Court armed with documentary evidence of so trustworthy a character that the presumption against any defence being possible is extremely strong.

"In such cases, the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and decide against him summarily and provisionally unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury are almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would

gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit.

"The truth really is, that facilities for recovering rents in Bengal should be sought for, not so much in novel forms of procedure as in a trustworthy record of tenancies and their incidents, and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large portion of the contested rent-suits.

"If this view is correct, the provisions of the Bill with respect to the preparation of Tables of Rates, settlement of rents and framing of records-of-rights, and those which relate to receipts and accounts, may reasonably be expected to remove most of the difficulties of which the landlords now complain.

"I am drawing to a close of my summary of the Bill, and the only other part of its provisions on which I need touch is that which relates to the sale of transferable holdings in execution of a decree for arrears of rent. The peculiar feature of the new procedure prescribed by Chapter XV of the Bill is that tenures sold in execution of decrees for arrears of rent accruing on them will be put up in the first instance subject to incumbrances, and, if the amount then bid is sufficient to liquidate the arrear, will be sold subject to incumbrances. If, on the other hand, the amount bid is not sufficient to liquidate the arrear, they will be put up and sold with power to avoid incumbrances.

"These provisions will apply of their own force only in the case of tenures; but, as there are in some parts of the country occupancy-holdings of great extent and in most respects similar to tenures to which it would be reasonable to apply the same rules, the Local Government is empowered to extend the system to occupancy-holdings in any part of the province it thinks fit.

"Such, then, are the outlines of the Bill which I ask leave to introduce. We claim no merit for originality in our proposals; we are but building on the foundations which others have laid, following the lines which others have traced. And it would be presumptuous to suppose that, in trying to work out a problem of exceptional difficulty and complexity, we have not fallen into errors of omission, inaccuracy or inconsistency. The Bill will be carefully scrutinized in many quarters, and I have no doubt that the aid which we shall receive from our critics will materially assist us in removing blemishes of this kind. But, whatever degree of perfection we may be able to give to the form of our work, we cannot, I fear, flatter ourselves with the hope that our substantial proposals are such as are likely to meet with universal acceptance. We find ourselves in the presence of conflicting claims; claims which, if pushed to their extreme on either side, must produce, have produced, bloodshed, anarchy and misery. We have endeavoured to hold an even hand between the two parties, and to define and adjust their rights in such a way as may be most conductive to the common interests of both and to the welfare of the country at large. But that either claimant should accept with equanimity anything less than what he conceives, rightly or wrongly, to be his due, it would be inconsistent with what we know of human nature to expect. Nor, again, do we suppose that, by this or any other legislation which we can devise, we are likely to settle, permanently and once for all, the eternal question of landlord and tenant. We find ourselves face to face with patent and glaring evils, evils which are crying out for a remedy; we have endeavoured to apply such a remedy as appears suitable to the present circumstances of the case, but we know well that we cannot absolutely prevent the recurrence of similar evils in the future. Sufficient for the statesman if he can grapple with the problem of to-day: for the distant future he must leave posterity to provide. And as we cannot foresee the distant future, so we cannot recall the distant past. We cannot, if we would, restore the zamíndár and the raiyat to the positions which they occupied at the time of the Permanent Settlement. The India of to-day is a different country from the India of 1793, and requires different legislation. The utmost that we can endeavour to do, and what we have endeavoured by the present Bill to do, is so to legislate for her as to preserve whatever is best in the spirit of her ancient institutions."

His Excellency THE PRESIDENT said:—"I believe it will be in accordance with the general understanding, and I think it will be the best course which I can suggest to my hon'ble colleague for the Council to pursue, that, after the very able statement of my hon'ble and learned friend, no discussion should take place upon this question at present; because it is obvious that, in a matter of this magnitude, members of Council would naturally desire to have time to consider that statement, and the Bill with which it is connected; and therefore what I would propose is this—that we should, when the motions now before the Council with regard to this measure have been passed, take the further consideration of it on Monday, the 12th, and, if it should be necessary to adjourn the debate, on Tuesday, the 13th of this month. The delay till Monday will give sufficient time, considering how fully the Bill has been discussed and how long the matter has been before the public, to enable us to take the further discussion of this Bill on that day, it being clearly understood that no other steps will be taken upon it now; so that the public will have ample time—some eight months—to consider the whole question and make all representations to the Government before the Bill goes before a Select Committee.

"The only other remark which I would desire to make is this. The Government propose to give to members of Council, and to the public at once, all the papers connected with this case. As a rule, the Secretary of State objects to the publication in India of despatches to and from himself, but I have obtained Lord Kimberley's permission in this case, regarding it as one of

exceptional importance, to publish at once, and without waiting for their being published in England, the despatches which have passed between the Government of India and the Secretary of State on this question; so that the papers which will now be given to the public will be full and complete.

"If my hon'ble colleagues accept the proposal which I have made, no further discussion will take place now. The Bill will be published, and we will take up the question again on Monday, the 12th of March."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 12th March 1883.*

## BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, Major the Hon'ble E. Baring, the Hon'ble Messrs. Ilbert, Reynolds and Evans, the Hon'ble Kristodás Pál, the Hon'ble the Mahárájá of Darbhangá, the Hon'ble Mr. Quinton and the Mover.

He said that the Council were aware of the circumstances under which his hon'ble colleague, Mr. Ilbert, had introduced the Bill on the 2nd of March, and he (SIR STEUART BAYLEY) could only congratulate the Council and himself that his enforced absence from here had transferred to Mr. Ilbert's hands the duty which he had so admirably performed. After the clear and elaborate statement which Mr. Ilbert had made on the 2nd March, as to the necessity for legislating, and on the principles of the Bill, SIR STEUART BAYLEY did not at present propose to say anything more on the subject, but he would reserve to himself the right to answer the objections which may be made in the course of the debate, which objections, he had no doubt, would be numerous. But he had just one word to say pertinent to the motion before the Council. He was at liberty to say that it was the intention of His Excellency the Viceroy to appoint to this Council a representative of the planting interests in Bihár, Mr. Gibbon, and on his being gazetted, and if he agreed, and if the Council agreed, he would be appointed to the Select Committee, and that hereafter, when vacancies occurred in the Council, as would be the case next year, it would probably be expedient to strengthen the Committee by the appointment of additional members who might fill those vacancies. Although the Bill will now be referred to a Select Committee, the Committee would not meet till next November, but during the Simla session criticisms would be received from the Bengal Government, and from the associations and individuals concerned; and those criticisms, when received, would from time to time be circulated to the members of the Committee for their consideration, and he hoped that, when the Council re-assembled in Calcutta, they should, by this means, clear a good deal of ground, and enable the Council to set to work at once.

His Highness the MAHÁRÁJÁ OF DARBHANGÁ then said:—"My Lord, it is not without considerable diffidence that I submit my views on the Bill which affects all classes of people.

"It is now more than six years that it was proposed by Sir Richard Temple to change the present law of landlord and tenant, and as the Government has already made up its mind to change the law, it would be useless for me to say that this Bill ought not to be introduced. But I might safely say that, as far as Bihár is concerned, no change in the present law is needed: neither the raiyats nor the zamíndárs have asked for a change, and that in itself is sufficient proof that no change is needed. The zamíndárs certainly do not wish to get any further facilities for the collection of their rents, and the tenants also do not complain of any oppression by the zamíndárs.

"A great deal has been said about the oppression of zamíndárs in Bihár, and I doubt not that in Bihár there are a few bad zamíndárs as well as a few bad raiyats. But it is most unjust to think that all the Bihár zamíndárs, as a class, are oppressive. That there was a great deal of oppression in former days I do not deny, but Mr. Reynolds, after his last tour, was able to say that things have quite changed of late.

"Illegal distraint used in former days to be common, but that is now almost a thing of the past. The zamíndárs now have sufficient knowledge of law to know that by illegal distraint they render themselves liable to criminal prosecutions and the raiyats also know how to protect themselves, and they are not now at all likely to let a zamíndár distrain their crops illegally. Besides, though the former system of distraint was certainly illegal, it was not necessarily oppressive. The Government itself, as the guardian of two of the largest proprietors in Bihár, was obliged to have recourse to this illegal system of distraint up to 1876. In the Darbhangá Ráj, when under the Court of Wards, it used to be considered the proper thing to distrain the raiyat's crops without serving them with formal notices. It was in 1876, however, that steps were taken to introduce a system of legal distraint, and I am happy to say that the system of illegal distraint has now entirely disappeared throughout Bihár, and

this is simply owing to the good example set by Sir Richard Temple and my hon'ble friend Sir Steuart Bayley. It would therefore be unjust now to call the zamíndárs of Bihár oppressive, and I hope I may be excused for having gone out of the way to say a few words in justification of the zamíndárs of Bihár, who have already been more than sufficiently abused in the report of the Rent Commission for carrying on a system of distraint which, though illegal, was not oppressive, and which the Government itself was carrying out until lately.

"I will now say a few words on the subject of occupancy tenures in Bihár. The zamíndárs, as a body, are not averse to the cultivators acquiring this right. It gives the raiyats a permanent interest in their lands, and they are, therefore, more likely to increase the value of their lands. But the Bill does not create this right in favour of the actual cultivators. On the other hand, it distinctly says that the sub-lessees, who after all are the actual cultivators of the soil, are not to acquire rights of occupancy. The actual cultivator is not to acquire the right unless he happens to pay in his rent direct to the zamíndár, and he is to be perfectly at the mercy of his middleman. This seems to me to be perfectly anomalous, and it would be a better proposal that a raiyat who is not an actual cultivator should not be allowed to acquire right of occupancy. Unless some such provision is made, we are bound to create a set of occupancy tenants, who are not the actual cultivators, but middlemen, and these middlemen would be in a far better position to oppress the cultivator than the much abused zamíndárs. The zamíndárs have to deal with those raiyats whose names are registered in the village papers, but these middlemen will have to deal with people who have in most cases no documentary evidence to prove that they are the actual cultivators. Then there is another provision of the Bill which concerns the zamíndárs more directly—I mean the provision which debars the raiyats from contracting against their rights of occupancy. Such contracts are but seldom made. A zamíndár might especially wish to have a piece of land all to himself, though it might not necessarily be his *zarat* or *khámár* land. It might be a jungle or a preserve, and supposing he was to lease out a part or the whole of this plot, on condition that at some future time it is to be given back to him, is he to be prevented from the use of his land for ever? Then, again, zamíndárs very often plant trees on their lands, and lease out the ground to raiyats to grow crops for a certain number of years, and, in most cases, at very low rates, on the condition of regaining possession of the lands when the trees grow up, and the raiyats gladly take such lands on short leases. Are these raiyats supposed to acquire rights of occupancy? Then, again, why provide for a right of occupancy against any contract to the contrary? Such a provision does away with the freedom of parties to contract. Parties understand their own interest better, and it is idle for the legislature to affect to protect their interests. To secure some personal benefit, a raiyat may very well give up his rights under the law, but if the provisions of the Bill are passed into law they would not be able to secure such advantanges for themselves.

"I am glad to see that the Bill proposes to do away with the law which entitled the tenants to acquire rights of occupancy only when they could prove that they were in the possession of an identical piece of land. There would be little harm done to the zamíndárs if, where raiyats occupy different lands in different years, the right of occupancy is allowed to spring up in respect of a particular quantity of land held for a certain number of years. But the Bill goes on further, and provides that if a raiyat occupies a very small quantity of land, and in respect of that quantity acquires a right of occupancy, such right would attach to all land which he may hold within the estate for however short a period. This is certainly unfair.

"About the proposed facilities for the collection of rents, I must confess that the position of the zamíndárs would be much worse if the proposed changes are carried out. The Rent Commission had proposed to abolish the system of distraint altogether. The new Bill has effected a compromise in this respect between the suggestion of the Rent Commission and the existing law; but I am confident that the proposed mode of distraint through the Civil Court, and the deposit of the proceeds for a month, would frustrate the very object of distraint, which is only had recourse to as a mode of speedy realization of rents. The present mode of distraint is the best and most speedy way of collecting rents. The proposed law, however, in a way abolishes distraint altogether. It burdens the zamíndár with the cost of an application to the Civil Court on stamp-paper, as well as with the expenses of paying lawyers, whereas now he has practically no expenses to incur. Illegal distraints are no doubt objectionable, but, as I have already said, it is only a very short time ago that the Government even used to resort to this illegal system in managing the Court of Wards' estates. This shows clearly that though illegal the distraint never operated as a hardship. It would, therefore, be most undesirable to change the present law, especially as the raiyats and zamíndárs have begun to know the law, and there has been absolutely no complaint by the raiyats that this instrument is used by the zamíndárs illegally, or as a means of oppression. It has been said that the law of distraint is an off-shoot of the English law. It may be so. But then how is it that you find in Nipál, which has had less to do with Foreigners than any other State in India, that distraint has been carried on for certainly more than a hundred years.

"Now I come to the most important point of the Bill—I mean the question about the enhancement of rents. The Bill proposes fixing tables of rates for each pargana. This may have been quite possible before the time of the Permanent Settlement, but I doubt if it is possible to do anything of the sort now. It is hardly possible to find two fields in the same village of exactly the same quality of land, and parties will never cease to question the correctness of classification of lands. I know of a pargana where the rate for some of the villages

is two rupees, whereas the rate for similar lands in another village is only two annas. Instead, therefore, of deputing officers to draw up Tables of Rates, would it not be better that the law should fix a certain proportion of the average produce as the zamíndár's rent.

"Now as to the question of transfer of occupancy holdings. The zamíndárs ought to be thankful for getting the right of pre-emption. But it is not always that the zamíndár is in a position to buy occupancy holdings, and in such cases would it not be advisable to give a *khúdkásl* raiyat the right of pre-emption in preference to an outsider, and immediately after the zamíndár? This might in some cases prevent an outsider coming in who has got no common interest with the villagers, and who does not necessarily care for the good-will of the village community.

"Here I might also mention the fact that though the zamíndárs have been allowed the right of pre-emption, still they are not allowed to buy on the same conditions as raiyats. A raiyat who buys an occupancy holding, and who does not wish to cultivate himself, can lease it to one who cannot acquire rights of occupancy; but if the zamíndár leases out any such holding the cultivator at once acquires rights of occupancy.

"About the survey of *khámár* lands I have to make only a few observations. Such surveys would cost a great deal of money, which the raiyats or the zamíndárs might eventually have to pay, and even then I do not see what good the raiyats or the zamíndárs are ever likely to get. No doubt it would be a first-rate thing to have proper records-of-rights, but it would be impossible to have proper records-of-rights by having a mere survey of a village.

"These are some of the observations which a cursory reading of the Bill suggests, but this is not the time to enter into all its details.

"In conclusion I beg leave to make the following observations:—The Bill was originally intended to give relief to the zamíndárs as well as to the raiyats. Sir Richard Temple and Lord Lytton thought that the zamíndárs should get further facilities for the collection and realization of rents, but the proposed Bill does not give the zamíndárs any facilities for the realization of rents. Now as to concessions to the raiyats I have very little to say. It is the zamíndárs' interest to make any fair concessions to their raiyats. All that a zamíndár needs is a law which secures him his rents and provides him with modes for speedy realization of the same, but I am obliged to say that if the procedure as laid down in the Bill is to become law, the zamíndár's position is sure to be much worse than what it is now, and I can safely state, before concluding, that Bihár zamíndárs are quite satisfied with the existing law, and do not wish for the change contemplated."

The Hon'ble KRISTODÁS PÁL said:—I wish to begin with a personal explanation, for which I crave your Lordship's indulgence. It may be supposed that, as I have the honour to sit in this Council under your Lordship's orders, with the suffrage of the landholders, it is my duty to look to the interests of the landholders alone. But such is not the case. I cannot divest myself of my natural sympathy with the millions who till the soil and constitute the backbone of the nation. Indeed, I would not be true to myself, to my cherished convictions, and to my humble labours for the promotion of my country's welfare, if I were to shut my eyes to the interests of one party for the sake of the other. All that I want is justice and fair play to both. No good landlord, I submit my lord, is blind to the interests and happiness of his tenantry. In fact, rightly understood, the interests of the two are interwoven with those of each other. A prosperous and contented tenantry is a blessing to the landlord and to the country at large. In considering the vitally important question before us, happily we have not to deal with a *tabulá rasa*, and are not left to our own unaided judgment. Both the landlord and tenant in Bengal have their charter of rights, and if we rightly interpret that charter we cannot go far wrong. This charter is none other than the Permanent Settlement Regulations. I consider it my duty to call the attention of your Lordship and the Hon'ble Council to the main points of that charter, and to invite your unbiassed decision upon those points.

"Before I proceed to discuss the Bill, I desire to offer my hearty acknowledgment of the ability, industry and thorough mastery with which the learned Law Member has grappled with this intricate and complicated subject. The Bill is, doubtless, the work of many hands, but he has accomplished his task in a few weeks which might baffle the efforts of many an expert in as many years. But I hope he will pardon me if I say I cannot accept all his conclusions and endorse all the views and opinions he has expressed on the subject. My Lord, the papers on the Bill have been before us for nine days, and I am free to confess that, consistently with my other avocations, I have not been able to give it that close attention which I ought to have given. I am therefore, likely to make statements and remarks from an imperfect study of the Bill, for which I hope I will be excused. In submitting the Bill to the Council, the Hon'ble and learned Law Member reviewed the whole question from the days of the Permanent Settlement, and in following his example I am afraid I shall also have to traverse a wide area. I may be tedious in my statements and observations, but I hope the Council will bear with me kindly.

"I think we ought to consider, in the first place, who are the zamíndárs who come within the scope of the Bill; what was their position originally; what functions did they perform in the administrative and social economy of the country, and how far were they useful to society and to the State? To ascertain the position of the zamíndárs, it is not necessary for me to go back to the ancient history of India—I mean to the days of Hindú supremacy. It is enough for us to know that when the Muhammadans took over this country they fully recognised the position, the status and rights of the proprietors of the soil. It is true that the revenue

demand was variable, but the rights and status of the zamíndárs were not at all interfered with. Before, however, I proceed to point out the position of the zamíndárs at the date of the Permanent Settlement, I will quote here the opinion of an eye-witness of the settlement as to the state of the country when the Permanent Settlement was effected, and the eminent service which that settlement rendered to the national Exchequer. I will read to the Hon'ble Council the opinion of Mr. James Pattle, one of the best fiscal officers of the East India Company, who before his retirement held the hon'ble office of the member of the Board of Revenue. Mr. Pattle writes :—

'The country brought under the Decennial Settlement was for the most part wholly uncultivated. Indeed such was the state of the country from the prevalence of jungle infested by wild beasts, that to go with any tolerable degree of safety from Calcutta to any of the adjacent districts, a traveller was obliged to have at each stage four drums and as many torches ; besides, at this conjuncture, public credit was at the lowest ebb, and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis' great and comprehensive mind saw that the only resource within his reach in this critical emergency was to establish public credit and redeem the extensive jungles of the country. These important objects, he perceived, could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness, and, therefore, promising to all those who would engage the encouragement of an immense profit from extending cultivation. Admitting the sacrifice was very great, I think it cannot be regretted when it is considered what difficulties it conquered, and what prosperity it has introduced. For my part I am convinced that our continuance in the country depended on the adoption of that measure, and that our stability could not otherwise have been maintained. This was my opinion at that time, and it has remained unaltered.'

"This is the opinion of an eye-witness of the Permanent Settlement as to the state of the country when that settlement was effected, and also when it was in operation for sometime. And it was his deliberate opinion that the Permanent Settlement enabled the Government of the day to keep the British power in the country. It may be said—and it is sometimes said—that the Permanent Settlement was financially a mistake, but in those days it saved the public treasury. The Company's treasury was on the verge of insolvency, their territories were threatened by powerful enemies ; on one side an adventurous European rival was plotting, and on the other mighty Native Chiefs were arrayed against the Company ; it was then a question of the continuance of English supremacy in the East ; on the other hand the land-revenue, on account of varying assessment, could not be regularly collected. It was at this juncture the Permanent Settlement was made.

"Ninety years have elapsed since this settlement was concluded. Within that period we have seen what changes, what commercial and material changes, have taken place, and how the jungle which then covered the land has been removed and cultivation has been introduced ; what financial prosperity has since succeeded the insolvency to which Mr. Pattle referred, and how active has been the national industry. I will not say that these results have been achieved wholly through the agency of the Permanent Settlement, but I do not hesitate to say that it has contributed greatly to the consummation of the changes which we now contemplate with so much satisfaction. It is well known that one of the charges brought against the Bengal land system is that it has involved the Government in an unnecessary sacrifice of prospective revenue. But, my Lord, if an examination of the development of the finances of these Provinces were made, it would be seen that in no other Province has the public revenue progressed so satisfactorily as in Bengal, and that whatever sacrifice was made by the Permanent Settlement of the public demand in Bengal has been more than made up by the enormous indirect increase of the revenue from many sources. This was particularly pointed out in the Duke of Argyll's despatch on the Road Cess.

"I now come to the position of the zamíndárs before or at the time of the Permanent Settlement. The name of Mr. Francis is well known in history as one of the colleagues of Warren Hastings in the administration of India. When he was in this country, the question of the land settlement occupied the attention of the Government, and enquiries were set on foot as to the position of the persons who were then known by the name of zamíndárs. Mr Francis in a Minute, dated 22nd January, 1876, or rather in a note to that Minute, wrote :—

'The inheritable quality of the lands is alone sufficient to prove that they are the property of the zamíndárs, taluqdárs and others, to whom they have descended by a long course of inheritance. The right of the Sovereign is founded on conquest, by which he succeeds only to the state of the conquered Prince ; unless, in the first instance, he resolves to appropriate or transfer all private property by an act of power in virtue of his conquest. So barbarous an idea is equally inconsistent with the manners and policy of the British nation. When the Moguls conquered Bengal, there is no mention, in any historical account, that they dispossessed the zamíndárs of this land, though it is frequently observed that where they voluntarily came in and submitted to the new Government, they were received with marks of honour, and that means were used to gain and secure their attachment.'

"These were the men whom the British Government, on the first acquisition of this country, found in possession of the land. Mr. Francis admits that the Muhammadan Government always recognized their position and rights, and in fact did all they could to gain and secure their attachment. I do not know whether many members of this Council have read that curious book called, I believe, the 'Four great zamíndárs of Bengal', by Mr. Rouse. It is now out of print, but it is a very interesting and useful book. It contains a good deal of information about the Permanent Settlement, about the status of landlords in those days, and gives a very interesting history of the four great families of zamíndárs in Bengal, namely, Burdwan, Dinájpur, Nattore, and Kishnagur. It also gives some account of some minor zamíndárs. I allude to this book only to show that in the days of the Permanent Settlement there were men in possession of large properties or estates, and that they were considered absolute proprietors of the soil. Now, in what light were these zamíndárs regarded by the

authors of the Permanent Settlement? Were they regarded as proprietors of the soil or not? Here is the opinion of Sir John Shore, afterwards Lord Teignmouth:—

'I consider the zamíndárs as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion; and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Díwání.'

"I will give an extract from the Minute of Lord Cornwallis, dated the 18th September, 1789. He says:—

'Mr. Shore has most ably, and, in my opinion, most successfully, in his Minute delivered in June last, argued in favour of the rights of zamíndárs to the property of the soil. But, if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zamíndárs for whose rights he has contended?'

"Again, His Lordship writes:—

'Although, however, I am not only of opinion that the zamíndárs have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained the property of Government, I am also convinced that, failing the claim of right of the zamíndárs, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.'

"So that Lord Cornwallis was deliberately of opinion that the zamíndárs were the proprietors of the soil, and that, even if their rights were questioned, still, as a matter of policy, proprietary rights should be conferred upon them. The zamíndárs before the Permanent Settlement were not only proprietors of the soil, but they actually exercised powers which legitimately belonged to the State or Sovereign; they levied duties on internal commerce, a power which, as far as I am aware, no private landlord is allowed to exercise in any civilised country. But in those days, as I have observed, the zamíndárs actually exercised that sovereign power. Lord Cornwallis justly held, on grounds of public policy, that such power should be withdrawn from the zamíndárs, and in his Minute dated 3rd February, 1789, he wrote:—

'I admit the propietary rights of the zamíndárs, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that however it may be sanctioned by long usage, I am convinced there are few who will not think us justified in resuming it.'

"And so this [illegible] was resumed—I do not say unjustly; I admit that it was very properly resumed. B[illegible]ntion it to show that the zamíndárs not only exercised the pow[illegible] of landlord, but eve[illegible]me extent, the sovereign power. Lord Cornwallis, as the hon'ble Council is aware, [illegible]e revenue demand at ten-elevenths of the gross rental, and, by way of compensation to [illegible]amíndárs, surrendered the waste-lands to them. The Government has always recognised th[illegible]ght of the zamíndárs to the waste-lands, and the assurance given to them in the days [illegible] the Permanent Settlement was repeated in the subsequent Regulations. Thus, I find the follo[illegible]ing in the preamble to Regulation II of 1819:—

'It appears to be necessary, in order to obviate all misapprehension on the part of the public officers and individuals, * * * * formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud or on any pretext whatever.'

"Section 31 of the same Regulation states that—

'Nothing in the present Regulations shall be considered to affect the right of the proprietors of estates for which a Permanent Settlement has been concluded, to the full benefit of all waste-lands included within the ascertained boundaries of such estates, respectively, at the period of the Decennial Settlement, and which have since been or may hereafter be, reduced to cultivation.'

"I will not allude here to the assumption sometimes made that the waste-lands should be treated in the same way as lands settled at the time of the settlement. It should be remembered that these waste-lands were howling wildernesses at the time, and that it was left entirely to the discretion of the zamíndárs to settle them in any way they might think proper. To that question I will not advert at present. I have said that the waste-lands were given to the zamíndárs by way of compensation for the exorbitant assessment of the Permanent Settlement. The Council was doubtless well aware that the assessment was so heavy that most of the first zamíndárs, with whom the settlement was made, were literally swept away under its effects. The great house of Nattore, which, I believe, used to pay 52 lákhs of rupees of revenue, was broken up completely under the crushing effects of the heavy assessment of the Permanent Settlement. The house of Dinájpur suffered similarly, and so did the house of Bírbhum and many other families. The Burdwan house was also tottering, and was only saved by the introduction of the patní system. I cannot do better than read to the hon'ble Council the remarks which no less an authority than Sir George Campbell has made on this subject in the Bengal Administration Report for 1872-73. He says:—

'The Government demand was then one which left a margin of profit, but small compared with that given to zamíndárs in modern days. There was wide-spread default in the payment of the Government dues, and extensive consequent sales of estates or parts of estates for recovery of arrears under the unbending system introduced in 1793. In 1796-97, lands bearing a total revenue of sikká Rs. 14,18,756 were sold for arrears of revenue, and, in 1797-98, the revenue of land so sold amounted to sikká Rs 22,74,076. By the end of the century the greater portions of the estates of the Nadiyá, Rajsháhí, Bishanpur, and Dinájpur Rájás had been alienated. The Burdwan estate was seriously crippled, and the Bírbhum zamíndárí was completely ruined. A host of smaller zamíndárs shared the same fate. In fact it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement.'

"Now, what do these startling statements show? The Permanent Settlement, as I have shown from a quotation from Mr. Pattle, was intended to benefit the landlords as well as the State. The State derived immediate benefit by the replenishment of the treasury. The landholders, however, at the time suffered extremely. In fact, as this statement shows, most of the original zamíndárs were swept off the face of the earth by the tremendous sacrifices they were called upon to make at the time the Permanent Settlement was established. Most of the present zamíndárs have come in by investing their capital, and they have done so in perfect reliance upon the good faith of the Government.

"I have shown that the waste-lands were made over to the zamíndárs by way of compensation. Now, how were the waste-lands brought into cultivation? My object is to show what functions the zamíndárs have performed in the social economy of the country. The zamíndárs in the first place invited tenants, because in those days it was the land which sought the tenant and not the tenant who sought the land. They established villages at their own expense, and they appointed the village smith, the village barber, the village priest, and other members of the village establishment, by giving them rent-free lands. They made takkáví advances to the raiyat for the cultivation of the land; they charged no rent whatever in the first instance, and subsequently levied a progressive rent as cultivation advanced, and in this way they reclaimed the jungle which covered the greater part of Bengal in the days of the Permanent Settlement. You may now go to any part of the country, and you will be struck by the smiling fields and the teeming populations which meet your eye in every direction. But, in 1793, you could hardly go a few miles from Calcutta without drums and torches to keep away wild beasts. Those who brought about these changes certainly deserved the thanks of the public.

"Now, what have the zamíndárs done in other respects? Have they been content only with the introduction of cultivation and the reclamation of waste-lands? No. As population has increased, as cultivation has extended, as civilisation has advanced, the zamíndárs have risen to the requirements of the time, and have also assisted in the execution of public works, in accordance with the spirit of progressive time. Go through the villages and you will generally find in most of them large tanks. I am sorry to say that tanks now-a-days are not dug with the same zeal as heretofore. But you will find many old tanks dug by the zamíndárs, and there was a double motive in the execution of this work. In the first place, water was necessary for cultivation in times of drought, and, secondly, it was necessary for drinking purposes. The zamíndár wanted to foster the settlement of raiyats [illegible] therefore, he opened these tanks; he had also partly a religious motive [illegible] in providing drinking water for the people. As this hon'ble Council knows well, among the Hindús religion supplies a strong impulse for many of their acts, and the digging of tanks was one of these. Then, as the country advanced in prosperity, there was necessity for roads, and the zamíndárs were not remiss in making them. They, in co-operation with their tenants, laid out large sums of money in making roads through different parts of the country. I will give you the example of one district only —the district of Huglí. The list which I hold in my hand does not comprise all the roads made in the district within the last few years, but it gives a good account of what has been done. These roads were made at the time of the Ferry Fund Committees which existed before the Road Cess Committee was constituted. The following is a list of the roads and bridges referred to:—

| Names of the Roads and Bridges. | Lengths. | By whom constructed. |
|---|---|---|
| | Miles. | |
| Bhastara to Tribany | 16 | Zamíndár of Bhastara. |
| Jonye to the Surussutty | 8 | Ditto of Jonye. |
| Jonye to Connaghur | 7 | Ditto ditto. |
| Biddabatty to Gobindpore | 7 | Singoor Zamíndárs. |
| Biddabatty to Huripal | 25 | Zamíndárs and F. F. Committee. |
| Chinsurra to Dhoneakhally | 25 | Ditto ditto. |
| Huglí to Dwarbasiny | 12 | Ditto ditto. |
| Pandua to Calna | 18 | Ditto ditto. |
| Howrah to Jugutbullubpore | 12 | Ditto ditto. |
| Metalling of the road from Serampore to Salkea | 13 | Ditto ditto. |
| The Bally Tension Bridge | ... | Ditto ditto. |
| Two bridges on the Dhoneakhally road | ... | Ditto ditto. |
| Three bridges at Nosorye, Tribany, and Satgan | ... | Zamíndár of Noapara. |

"Now, what has been done in Huglí has been more or less done in other districts in Bengal. If the Council will refer to the Famine Report of Sir R. Temple, they will see that the zamíndárs gave, free of cost, all the lands required for roads and tanks which were constructed during the scarcity of 1873-74. In fact, the question arose whether the Government could take over lands free of all consideration, and the learned Advocate General was of opinion that it could not. But the zamíndárs in a body refused to receive a pice for the lands they gave for those purposes.

"Now, have the zamíndárs done anything for education, in the way of establishing or promoting the establishment of schools? I have been just reading the last report of the Director of Public Instruction, Bengal, and I find that the total amount of private contributions

was nine lákhs last year, including both endowments and private subscriptions. The statement is this :—

| | Government Institutions. | Aided Institutions. | Unaided Institutions under regular inspection. | Total. |
|---|---|---|---|---|
| | Rs. | Rs. | Rs. | Rs. |
| Endowments | 65,015 | 64,332 | 32,957 | 1,62,304 |
| Subscriptions | 14,870 | 6,19,205 | 1,11,838 | 7,45,913 |
| Grand Total | ... | ... | ... | 9,08,217 |

"Any one who knows the sources from which these contributions usually come will admit that the bulk of it came from the pockets of the zamíndárs. In the same way, in 1881-82, the total expenditure on dispensaries was Rs. 3,74,000, and the subscriptions from the Native community amounted to Rs. 1,20,000, and it may be also said that the bulk of this money came from the zamíndárs. I ought to have said, while noticing the support which the zamíndárs have been giving generally to education, that some of the most munificent benefactions in the cause of education have come from the zamíndárs. Take, for instance, the magnificent Tagore Law Professorship endowment at a cost of three lákhs of rupees, which was founded by the late Hon'ble Prasanna Kumar Tagore, the illustrious uncle of my friend Mahárájá Sir Jotíndra Mohan Tagore. My friend the Diggiapattí Rájá has given, I believe, Rs. 1,20,000 for the Rajsháhi College; munificent donations have also been given for the Ravenshaw College at Cuttack, and for the Berhampore and Kishnagur Colleges by other zamíndárs; and I say it with much pleasure that one of our hon'ble colleagues, the Hon'ble Durga Charan Láhá, has given Rs. 50,000 towards the cause of education. I could mention many more names, but it is not necessary. I cannot, however, refrain from alluding to the many magnificent benefactions given by my friend the Mahárájá of Darbhangá, and I think it is not too much to say that the zamíndárs generally have not been deaf to the call on their purses in the cause of education. Then there was one branch of education which the zamíndárs from the first encouraged with the greatest liberality—I mean Sanscrit learning. I believe hon'ble members were aware that rent-free lands to the extent of more than a crore of rupees were assigned by the zamíndárs, of their own free-will, for the support of men professing Sanscrit learning. The great house of Nadiyá gave away in this way, I believe, the bulk of its property. These were voluntary contributions. But the zamíndárs were also subject to compulsory contributions for public purposes. I may mention, first, the dák cess. It is not necessary for me to go into the question of the dák cess, whether the zamíndár was liable to render postal service or not. It is enough, for my present purpose, to say that they were required to pay the cess. Then the zamíndárs were also liable to pay the road and public works cesses, and with them their raiyats are also liable, and the amount thus contributed by the zamíndárs annually comes to 35 lákhs of rupees. Then the zamíndárs construct embankments voluntarily, for the protection of their raiyats, and they are also liable to an embankment cess for those embankments which are maintained at their expense by the State. They are also called upon to perform certain official services. Whenever troops march through their estates they are required to provide supplies for them; whenever public officers pass their way, they also do their best to send provisions to them; whenever heinous criminal offences were committed within the limits of their estates they were required to report the same to the Police. In the days of the salt monopoly of the East India Company, the zamíndárs were made liable for the illicit manufacture of salt on their estates. Whenever statistical or economical enquiries are made the zamíndárs are required, through the Police and the Magistrates, to make reports, and whenever any great public work has to be done their services are put into requisition. Take, for instance, the census operations. I appeal to His Honour the Lieutenant-Governor to say whether the Government could have carried out the census work at double the cost which was incurred if the zamíndárs had not freely offered their own services, and those of their servants, in furtherance of this great work. And they perform these public services ungrudgingly; they fully acknowledge that property has its rights as well as its duties. Then, again, the public seem to think that they have a claim on the purses of the zamíndárs for all public purposes, for whenever there is any call for money, who is it that is first appealed to? It is the zamíndár. Take, for instance, the calls made here for contributions for the relief of the sufferers from the Crimean war, the Scotch famine, the Irish famine, the Lancashire distress, and many other funds. If you examine the list of contributions, you will find that zamíndárs have always headed it; even for race-stands, agricultural shows and other objects their purses have been taxed. The district officers do not hesitate to appeal to the zamíndárs whenever they have a public object in view. And in times of difficulty the zamíndárs have loyally, willingly and cheerfully placed their services at the disposal of Government. Take, for instance, the Sepoy Mutiny. Happily, the flame of the Mutiny did not extend to Bengal Proper, but it did spring up in parts of Bihár, and the Government have heartily acknowledged the loyal services which the Bihár zamíndárs rendered in that crisis. In Bengal, too, they did some service in their own way by supplying elephants and other things for which

the Government applied to them. Even in fiscal emergencies the Government has not hesitated to appeal to the zamíndárs, relying on their loyalty, and with the greatest alacrity they have responded to the call. I am personally acquainted with the circumstances of one case. In 1878, there was a financial pressure, and Sir John Strachey, who was then the Finance Minister, wanted temporary accommodation to make the two ends meet. He did not desire to raise a public loan, he simply wanted a temporary accommodation, and he spoke to Sir Ashley Eden and asked him if he could secure some lákhs of rupees in that way. I was taken into confidence, and I know that several of my zamíndár friends willingly came forward with the required help. So whenever there has been any occasion for help, and whenever any appeal has been made to the zamíndárs, they have not hesitated to render every assistance in their power to the State. I may also cite the Minute of Sir R. Temple as a testimony to the services which the zamíndárs rendered to their tenantry during the great famine of 1873-74. I wish I had before me a copy of that Minute to read to the Council a few extracts from, but I am sorry to say I have not got it. I dare say that Minute has been read by most hon'ble members, and they doubtless recollect that the zamíndárs, as recorded in that Minute, remitted lákhs of rupees of their rent, suspended the payment of rent, gave takkáví advances, and afforded charitable relief to their tenantry in that crisis without any grudge, and Sir R. Temple justly complimented the zamíndárs by saying that they had nobly redeemed their character as landlords. Apart from these facts, I may tell you that, whatever disputes may here and there exist or arise between zamíndárs and raiyats, the raiyat generally looks up to the zamíndár as a protector against oppression and injustice. If a policeman troubles him he goes to the zamíndár; if a private individual assails him he goes to the zamíndár; if there is a quarrel between the raiyat and his brother, his sister or his uncle, he goes to the zamíndár for an amicable settlement of the quarrel. In fact, whenever the raiyat is in difficulty he looks up to the zamíndár for assistance, for advice, and for árbitrament. But while the zamíndár performs these functions I hope the Council will kindly bear in mind that the zamíndár does not get all the profits from the land in the shape of rent. The road cess returns show that there is a long chain of sub-infeudation in the country, and that the profits from land are largely intercepted by middlemen. When the Permanent Settlement was first made, these middlemen were not in existence, except the dependent taluqdár, the istimrárdár and the mukararídár. But as I have shown, the pressure of the assessment was so severe that even the big house of Burdwan was tottering, and for his sake the patní system was introduced, and from that time sub-infeudation commenced. A large number of tenure-holders sprung up under this system, and they gradually intercepted the profits from the land. I do not say that this is to be regretted, for the more wide-spread are the profits from land the better for the country, but this fact should be borne in mind, because it was generally thought that all the profits from land were monopolized by the zamíndárs. On this point Sir R. Temple, in the Administration Report of Bengal, for 1875-76, wrote:—

'The material advancement of the sub-proprietors, the raiyats and the peasantry in Eastern Bengal has been mentioned with satisfaction on former occasions. A remarkable illustration has been afforded by the detailed inquiries which are being made for the valuation of the lands in the deltaic district of Bákárganj. It appears from the road cess returns that the rent-roll payable to the intermediate tenure-holders is often twelve, twenty or fifty times the rent paid to the superior landlord. It seems probable that not less than a crore of rupees (assumed as equal to one million sterling) are annually paid in rent in this district, and that the value of the agricultural produce of the district can hardly be less than five millions sterling annually, and may be much more. The returns, moreover, while they show the prosperous condition of the tenure-holders and other middlemen, show also how the profits of the land are slipping out of the hands of the zamíndárs, who have permanently alienated their interests in the soil, and, in many cases, have fallen into the position of needy annuitants.'

"So that the zamíndár did not monopolize the profit from the land which constituted rent.

"Now, I have gone to this length to show who the zamíndárs were, what functions they performed in the social and administrative economy of the country, and what services they have rendered to society and to the State, only with a view to impress upon the members of this hon'ble Council the propriety of showing some consideration to men who were so useful to the country. I do not believe that those who perform such important functions will not receive due consideration at the hands of this Council in dealing with the law of landlord and tenant. If they have performed such useful and beneficent functions, have they no claim to your generous consideration; and are they not entitled to have their rights duly recognised by the State and the legislature? The hon'ble and learned Law Member, in introducing the Bill, said that the zamíndárs were in no sense absolute proprietors of the soil; that, according to the definition of owner in certain English Statutes, he apprehended that the zamíndárs were no better than managers or trustees or limited owners of the land. I will, with your Lordship's permission, read one short extract from the hon'ble member's speech. He said:—

'In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of land he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and, therefore, could not possibly be taken as indicating or, to use a technical term, connoting rights created at that date. And thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement literature of British India. It means, in those parts of India which are not permanently settled, the person who, whatever may be his rights on the soil, has the right of having a settlement made with him, the person, namely, whom for purposes of land-revenue and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number

of other persons. All such rights are simply left outstanding. The use of the term proprietor in this sense is closely analogous to the use of similar terms in English statute-law. Here, for instance, is a definition of owner taken from a recent English Act, the Public Health Act of 1875:—'Owner means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent.'

"I appeal to this hon'ble Council to consider whether, when Lord Cornwallis and Sir John Shore effected the Permanent Settlement, they understood the words 'proprietor of the soil' in that sense. I have already read to the Council extracts from the Minutes of Sir John Shore and Lord Cornwallis, giving their opinion on the status of the zamíndár at the date of the Permanent Settlement, and I will now confine myself to the one point raised, namely, the legal position of the zamíndár. I daresay the hon'ble and learned Law Member will acknowledge the high authority I am going to cite. I allude to the opinion of Lord Lyndhurst,—Vol. I, Moore's Indian Appeals, p. 348—

'It is to be gleaned from these Regulations that the proprietors of lands in India had an absolute ownership and dominion of the soil, that the soil was not vested generally in the Sovereign, that proprietors did not hold it at the will of the Sovereign, but held the property as their own. * * * I think it is impossible to read those articles without coming to the conclusion that the zamíndárs and taluqdárs were owners of the soil, subject only to a tribute, and that it was the object of the Regulation to make that tribute fixed and permanent.'

"My Lord, I am no lawyer, and am, therefore, bound to accept the interpretation of the law as it may be given by the learned Law Member; but, in the face of this opinion from no less an authority than Lord Lyndhurst, I hope I may be excused if I refuse to accept even the high authority of my learned friend. If Lord Lyndhurst holds that the zamíndárs are the actual and absolute proprietors of the soil, I appeal to the Council to consider whether many of the provisions contained in the Bill are consistent with that reading of the law. For, if I understand the Bill aright, it proceeds wholly on the assumption that the zamíndárs are not owners of the soil, and, therefore, they must submit to a redistribution of property, as it were, under the operation of the proposed law. From 1793 to this day, the zamíndárs have been recognized by the Government over and over, by solemn Regulations and Acts, and also in solemn State papers, as proprietors of the soil. Even Act X of 1859 did not do away with the material incidents of proprietary right, though it recognised the occupancy-right of the tenant under the twelve-years' rule; it did not take away the right of enhancement of rent, of eviction of the raiyat, and many other rights inherent in an absolute proprietor of the land. But, after the lapse of ninety years, the zamíndárs are now told, by no less an authority than the learned Law Member of your Excellency's Council, that they are not proprietors of the soil, that they were hitherto labouring under a huge delusion, and that they must prepare their minds to surrender their rights as soon as they can, that there is another class waiting to participate in the land with them; that in fact there is to be a re-distribution of the landed property. I hope this hon'ble Council will seriously consider the effect of these propositions, for if I read the Bill aright it amounts to this.

"Now I come to the necessity for legislation. I at once concede that there is necessity for legislation. There has been for many years necessity for legislation. I regret much that it has taken the Government so long a time to give that relief which both the zamíndár and the raiyat have stood much in need of for so many years. From 1871 Government has been promising to simplify the law for the recovery of rent. It is well known to this Council that it was no part of the obligations of the zamíndárs to collect the road cess and public works cess for the Government. But Sir George Campbell, when he imposed the road cess, succeeded in getting the assent of the zamíndárs to collect the cess on behalf of the Government, on the understanding that the law for the recovery of rent would be simplified without delay. The zamíndárs had felt the delay in the recovery of rents as a great grievance, and they said that if the Government would give them the *quid pro quo*, they would undertake the duty of collecting the cesses. It is to be borne in mind that the zamíndárs received no remuneration whatever for the collection of the cesses either by way of percentage or in any other form; and I do not know whether any commercial community would undertake such a duty without charging commission of some kind. But the zamíndárs did not take any remuneration. They were only buoyed up by the hope that the law for the recovery of rents would be simplified. When Sir George Campbell left the arena no change was made. He made promises, but no change was effected. He made inquiries and intended to do something, but nothing was done. Then came Sir Richard Temple. He, too, saw the propriety of changing the law of procedure for the recovery of rent. He also prepared a draft Bill, but nothing was done. Then came Sir Ashley Eden. During the first two years of his rule he was very active in this matter. He actually caused a Bill to be introduced into the Local Council, but that Bill was dropped on the plea that the whole rent-law should be dealt with. From that time rose the cry for a general revision of the rent-law. Heretofore, the complaints were about the recovery of rent and the settlement of rent, but now came the cry for a general revision of the rent-law, a comprehensive revision of the substantive rights of landlords and tenants. Against such a general revision the zamíndárs protested. There was not the faintest echo from the raiyats in any part of the country to the cry raised by the Government that there should be a general revision of the substantive law. And yet the Bengal Government thought it necessary to appoint a Commission to prepare a draft Bill for the general revision of the rent-law. The Commission was fairly constituted, and I must do them the justice to say that they performed their work with great intelligence, ability, and zeal. But, my Lord, I cannot help saying that the Bengal Rent Commission did not work in the way in which Commissions of a

similar kind worked in England, and, as far as I am able to judge from the papers submitted by them, they have not given sufficient data for the conclusions arrived at by them. They made no statistical enquiries; they made no local enquiries; they sat in their own chambers; they called for official reports, and from the depth of their own consciousness they evolved their theories and propositions. Ransack their reports, ransack the voluminous literature which they have produced, and find out if you can any information as to what extent evictions were resorted to in this country. That was one of the first propositions they were charged with enquiring into. It was said that evictions were on a large scale resorted to in Bengal; but where were proofs in support of such a statement? They ought to have given some figures showing the current of evictions district by district; but where were they? On the contrary, is it not a fact that evictions were rarely resorted to by the landlord, and that the Courts were most reluctant to order eviction? Then there was the question of the transferability of occupancy tenures. On this point have the Rent Commission given any details? Of course, they say that this right is recognized in some parts of the country; but where are the facts and figures? Were not the records of the Courts open to the Commission? and could not they give facts and figures, extending over some years, to show that to this extent the custom has prevailed?

"Now, with regard to the enhancement of rents. Is it a fact that the enhancement of rents is going on under the provisions of Act X of 1859? It is generally believed that these provisions have brought enhancement of rent to a deadlock. I, for one, would have been glad to receive some statistics on this point—how far enhancement has been stopped by the present provisions of the rent-law; how far the rates have been altered, that was to say the rates at which the rent was paid before and is now paid; in what proportion rents have been increasing, and so forth. Enquiries of this kind have been lately made in some districts for the collection of Tables of Rates; but the papers produced by the Rent Commission offered little information on the subject. I think that if a Commission of this kind had been appointed in England they would have given fully the facts and figures on which their conclusions were based.

"But the Rent Commission of Bengal, I am sorry to say, did not furnish us with such facts and figures as would fully bear out their own conclusions and opinions. That Commission, I believe, was appointed with the view of securing to the Bengal raiyat what were popularly called in England the three F's. Now, it is worthy of consideration whether the three F's, consistently with the economic conditions of this country, have not already the fullest operation here. Fixity of tenure. The twelve-years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of the agricultural population of this country. Some estimate it at ninety per cent. I cannot of course be positive about the figure; but, from all I have seen and heard, I hold that the right of occupancy in Bengal is enjoyed by the vast majority of these tenants. In Bihár, too, though the raiyat does not fully appreciate the right, the right is practically enjoyed by the raiyat as appears from the report of Mr. Finucane, and it is for the Council to consider how the occupancy-right in Bihár is to be secured by law. The fact remains that it is already in operation. Fair rent. Now I invite hon'ble members to enquire and say whether the rents now levied in Bengal are not fair; whether the raiyats in any district now pay rents which may be called rack-rents, I mean in any district in Bengal Proper. So that you have now fixity of tenure, and fair rent. As for the third F, free sale, I admit that it is not common; that the custom obtains only in some districts, and that there even it is not fully recognized. It is a question whether the right of free sale should be fully recognized in the interest of the raiyat, and whether it would be quite consistent with the rights of landlords. I will return to this question hereafter.

"I now come to the Bill itself. I have already said that the Bill has been prepared with great ability and care, but I do not quite understand the primary object of the Bill. Is it to prevent dispute and litigation and to promote peace and harmony amongst zamíndárs and raiyats by reasonable, fair and equitable provisions, or is it to re-distribute rights in land, to promote and foster litigation, and set class against class? I should be very sorry to believe that the authors of the Bill had the latter object in view. I repudiate any such notion; but at the same time, when I read the Bill and contemplate its tendencies, I cannot help feeling that, however opposed such a tendency may be to the views and wishes of the hon'ble authors of the Bill, it will be practically difficult to control that tendency of the Bill, so long as the provisions contained in it are allowed to have full play. I was in hopes that it would be in my power to propose a compromise which might be acceptable to both zamíndárs and raiyats, and thus to contribute in some way to the promotion of that peace and harmony on which I lay great stress. But the present Bill, I am sorry to observe, is so one-sided that I cannot entertain any hope of proposing any such compromise. Indeed, there could be no compromise without concession on both sides, but the Bill leaves little room for compromise. I do, however, entertain the hope that when the Bill will be considered in Select Committee, with the light of public criticism and public representations, the Committee will take into consideration outside views, and deal with an even hand with both classes which are interested in and affected by it. After giving, as I have said, rather an imperfect perusal to the Bill, I find that its tendency is to drive both the raiyat and the zamíndár into Court at every stage and to foster litigation all round. In the first place, it is proposed to make a distinction between *khámár* and raiyattí land. Now, as far as Bengal Proper is concerned, I can say that there has been made no attempt whatever to absorb raiyattí land into *khámár* land. The enquiries which I have made on the subject have satisfied me that the absorption of the raiyattí land does not apply to Bengal Proper, nor has there, I believe, been any complaint on the part of the raiyats that they cannot obtain land from the zamíndár because he has absorbed the raiyattí land into *khámár* land. When

such is the case, is it desirable to throw the country into the ferment of expensive and harassing litigation, by ordering a survey and measurement and registration of these lands? I believe the most important principle of legislation is that it should be made to meet the actual needs of the country. Now the question is this, whether there is any actual necessity for the measurement, survey, and registration of these lands in Bengal. Well, if the power is meant to be permissive, then it is not intended to apply it to Bengal Proper, because such necessity does not exist here.

"Then comes the question of occupancy-right. Now it is not my intention to go into the history of that question. That history has been repeated times without number, and the question has been discussed threadbare. It is enough for my purpose to recognize the position that Act X of 1859 gives the right of occupancy to the raiyat who holds the same land for twelve years consecutively. I accept that position. I have already said that the occupancy-right has already extended to the majority of raiyats in Bengal, and the question is, is it necessary to extend this right further, and to give a construction to the law which would practically give the raiyat the right to claim all lands as occupancy holdings, provided he occupies any one spot for twelve years? The present law is, that the right of occupancy shall accrue upon the same land. The provision of the proposed Bill is, that the right of occupancy shall accrue upon all lands which a raiyat might hold in the same village, or estate, if he has twelve years' possession of any particular plot; so that the effect would be that the raiyat who might hold two cottahs of land in village A for twelve years will thus acquire the right of occupancy in two hundred bighás of land in villages B, C, and D, though he might have had possession of the same lands for only three or four months or years. I say the extension of the right of occupancy in this form is not consistent with the principles of the rent-law of 1859, nor consistent with the proprietary rights of zamíndárs. It has been said that this provision has been rendered necessary by the recourse some zamíndárs have to shifting raiyats from plot to plot, from land to land, in order to destroy the accrual of the right of occupancy. But, as far as Bengal Proper is concerned, I am not aware of a single instance in which the zamíndár has sought to defeat the right of occupancy in this way. Those who have written on the subject, including no less an authority than Sir George Campbell, have readily admitted that this practice is not known in Bengal Proper, and yet it is to be extended to Bengal Proper under the present Bill. Now, I have said that this Bill will drive the raiyats and zamíndárs to Court at almost every step. How do I establish my position? If a raiyat is allowed to acquire an occupancy-right by the accumulation of time, if he holds different plots of land at various periods, there will be so many disputes about the calculation of periods that nothing will be practically decided without recourse to Courts.

"Then comes the question of rent. In every case the settlement of rent will be practically subject to litigation. Whether it is settled by the Court or by a special revenue-officer, it will be a legal proceeding in some form or another. Nothing can be done, as the system has been devised, by private arrangement between the zamíndár and raiyat. If the zamíndár and raiyat come to a private understanding and enter into a contract, they must go to the revenue-officer as the keeper of their conscience. If they don't come to a private understanding, they must go to Court. So they cannot act as free agents or free men; they must have recourse to litigation.

"Next comes the question of the realization of rent. Of course, if there are arrears, there must be litigation, and so on through all stages, even in matters of minor dispute. We will have, if I may be permitted to observe, a Pandora's box in the name of peace and harmony.

"I have said that the practical effect of this Bill will be the re-distribution of property. If any one will carefully read through the Bill he will see that it takes away some of the most important incidents of proprietary right. In the first place it abolishes the right of contract as regards occupancy-right. Now, what is the ground upon which this extreme proposition is based? The hon'ble and learned Law Member has produced what he thought was a horrible *kabúliyat*, and asked the Council to consider whether the legislature could conscientiously protect such a thing. I have not seen the original of that *kabúliyat*, but will consider it in the form of the translation in which it is given in the statement of the hon'ble member. I have compared it with the *kabúliyats* and *pattás* given by Government in *khás* estates, and also with the form of *kabúliyat* which the Government had at one time held up as a sample for landlords, and which the Government used to sell to the general public. I do not know whether that form is now for sale, but I find, from a notification by Government in 1875, that a form of *kabúliyat* was printed and sold for public use by the Government, and in comparing this form with the condemned form which the hon'ble member has laid before the Council, I find that there is no very material difference, except upon one point. Now, I will briefly dwell upon this subject. The first point in the *kabúliyat* to which the hon'ble member took objection was the monthly instalments. He said that 'monthly instalments were oppressive. They drive the raiyat to the money-lender before the harvest, and they enable zamíndárs to worry the raiyats by bringing suits every month, and saddling the raiyat with costs.'"

His Honour THE LIEUTENANT-GOVERNOR enquired whether this form was issued from the Bengal Office.

The hon'ble speaker stated that they were sold in the Bengal Office.

The MAHÁRÁJÁ OF DARBHANGÁ said that they were circulated in Court of Wards' estates.

The speaker continued:—"Now, if the hon'ble member had enquired, he would have known that Government revenue was formerly paid in monthly *kists*, and throughout the country rent was paid in monthly instalments, and that, subsequently, it was divided into quarterly instalments, and that in many parts of the country it is still paid in monthly instal-

ments. So that this is no new condition, but even the payment of quarterly instalments might drive the raiyat to the money-lender, as he could not always pay before the harvest.

"I should mention that these monthly *kists* have been recognized in this country for a long time, and that even Suvankar, the Cocker of Bengal, has given, in one of his arithmetical tables, the calculation of monthly *kists*, so common was the practice. In the Government *kabúliyat*, I find that the first condition was in 'default of instalments, monthly interest at the.....per centum you shall pay.' Now this is important, because it is a sample pattá which is prescribed by the Government, and the first condition is, that if there was default so much interest must be paid. It is not necessary to go into this point at any length, but I will observe that Regulation XI of 1793, admitting this usage, imposed these *kists*, and severe penalties for default were prescribed in section 2. I have said that the same condition is prescribed in the Government form of pattá. But what does the Government do in its own estates? What is the practice of Government in its own *khás mahál*? I will read some passages from the forms of leases prescribed by the Board of Revenue:—

* * 'pay the Government revenue *kist* by *kist*, according to instalments noted at the foot of this engagement. If I fail to pay the full amount of one instalment, or a part thereof, due within the year, Government shall have power, on its own authority, without the interference of Courts, to cancel any lease even before the close of the year'—*Vol. II, page 131, Form 16.*

"So here we see that the Government tells the tenant, 'if you fail to pay monthly revenue *kists*, the Government will have power, on its own authority, and without the interference of Courts, to cancel your lease even before the close of the year.' Then, again, Vol. II, page 138, 'pay the revenue *kist* by *kist* according to the kistbundi noted at the foot of this agreement." So that the horrid private pattá which contains the condition about monthly instalments is not singular or *unique*.

"The next point is, 'If I fail to pay rent on a-due date, I will pay interest at the rate of two pice in the rupee until the date of realization.' The remark of the hon'ble member was that thirty-one per cent. was charged in the *kabúliyat* he had read out. It was well known that this was what was usually considered or called a penal sum, and that the Courts never decreed that rate of interest, the law allowing only twelve per cent. per annum, and such a clause, the hon'ble member knows, finds place in bonds in England; here the zamíndár charges interest if the raiyat wilfully defaults. What does the Government do in its own *khás mahál* if the raiyat defaults? Here is a provision in Form 25, page 141: 'If I default * * * I may be ejected at the will of the Collector.' The zamíndár is content with interest, which the Court will never decree at more than twelve per cent. per annum; but under the form quoted, the Government, in case of default, has taken power to eject a tenant without the intervention of the Courts.

"I would ask the Council to compare the terms of the *kabúliyat* taken from Government raiyats on Government estates upon the same points. I would refer to the Board's Rules again: the tenant engages—'I shall not ask for any abatement of revenue in consequence of inundations, drought or any other calamities, and no such requests if preferred will be listened to.'—*Board's Rules, Vol. II, page 131, clause 6, Form 21.* Again, 'I shall not raise any objection to the full and punctual payment of the said revenue on the score of inundations, &c., or other accidents affecting the value of the said land or the outturn thereof; and I shall raise no claim to abatement on any such account.'—*Form K, clause 5.* It will be seen that no deduction is to be allowed to a Government tenant even in case of diluvion. And these were *kabúliyats* which the Government obtained from tenants on their own estates.

"The next objection is that the raiyat is not allowed to enjoy the value of trees, or to cut down trees. Now, similar rules will be found in Government Forms. Thus—'I shall not sell or cut any trees on the estate whether bearing fruits or not.'—*Form 16.* I presume that the raiyat who executed the private *kabúliyat* must have been a new comer; and if he was a non-resident raiyat, I do not see any reason why the proprietor should be debarred of the right of making a contract with him that he should not be entitled to the right of occupancy. If this is considered objectionable, landlords will be able to accomplish their object in a different way, that is to say, by taking terminable leases for, say ten years, and renewing the same at the end of ten years; and so defeat the accrual of the right of occupancy. In this *kabúliyat*, I see the zamíndár has gone straight to his work; but I hope it will not be supposed that, because there may be some instances of new raiyats who may enter into an engagement claiming no right of occupancy, for the simple reason that they have no just claim to such right, therefore, the right of occupancy is not allowed to accrue in this country. On the contrary, as I have shown, since Act X of 1859 came into operation, the right of occupancy has extended to some ninety per cent. of the raiyats throughout the country. But how does the Government meet such cases in the *kabúliyat* which it takes from its own tenants? The tenants declares 'in the event of my dying during the continuance of the term of this engagement, the Government shall have power to settle the mahál with any one.'—*Form 16.* In this private *kabúliyat*, the right of the heir is recognized, but in the Government instrument that right is not recognized. Then the hon'ble and learned Law Member comments on that clause of the *kabúliyat* in which the raiyat engages to pay the road and other cesses. Of course, I do not know what the words in the original *kabúliyat* imply, but no Court of Justice will decree the full amount of road cess against the raiyat. As regards the dâk cess, it is payable by the zamíndár. But if the hon'ble and learned Law Member will refer to section 12 of Act VIII of 1862, he will find that private contract in this matter is allowed, so that the zamíndár is perfectly within the law if he makes a contract between himself and his raiyats providing that they would pay their share of the dâk tax. With regard to trees, I find that only one-fourth of the value of the wood is to be

given to the raiyat under the private *kabúliyat*. What is the provision in the Government *kabúliyat* on this point? Form 16 says, 'I shall not cut or sell any tree on the estate whether bearing fruit or not.' So under this stipulation the Government tenant will not get even one-fourth of the value of the wood, which the zamíndár allows under the *kabúliyat* before the Council. Then there is Form 22, in which an option is given to the raiyat to enjoy the right of cutting trees or not, and in Form 23 it is stated: 'I am entitled to take and enjoy the fruit only of the existing trees or of such trees as may be planted by me.' Comments on these conditions are superfluous. I shall not pursue the subject further. I have shown that the conditions contained in the *kabúliyat* quoted by the hon'ble and learned Law Member are much the same as those in the Government sample Form advertized in 1875, and that the conditions of the *kabúliyats* taken by Government from its own raiyats contain similar, if not harder, conditions. If such is the case—if Government itself, in its own wisdom, has thought fit to prescribe such *kabúliyats*—I ask whether they are of such an outrageous nature as not to justify the protection of the law. I submit that, if it be considered right and just that the raiyat and zamíndár may enter into a contract with regard to the disposal of land on permanent or temporary lease, that the raiyat may enter into a contract in all other matters affecting his own interests, and that a coolie in Bengal may enter into a contract for the sale of his labour in the wilds of Assam, I do not see any good and valid reason why the zamíndár and raiyat should be debarred of the right to enter into a contract of this kind, because the matter relates to the right of occupancy in the soil. Surely, this matter ought to be dealt with in the same way as other matters of contract affecting the rights of landlord and tenant.

"I now come to the question that the proprietor has a natural right to elect his own tenant. This right is admitted by the hon'ble and learned Law Member. He says that, in order to secure that right, we propose to give the zamíndár the right of pre-emption; that is to say, if the occupancy-tenant should wish to sell his tenure or to mortgage it, the zamíndár shall have the right to pre-emption in regard to it, and that, if the zamíndár and the raiyat should fail to come to any settlement as to price, they shall go to the Court for such settlement. Here, again, both the zamíndár and raiyat are driven into Court for the settlement of their differences. Now, apart from that, let us consider what will be the economic effect of a provision like this. If, as I have ventured to show upon the authority of Lord Lyndhurst, the zamíndár is the actual and absolute proprietor of the soil, is it right that, when one class of his tenants should leave his land, he should be made to pay a fine for securing his proprietary right in the same? Why should he be made to purchase what ought to belong to him as a matter of right? Even admitting, for argument's sake, that the zamíndár's power of ownership is limited, that he must not absorb into his own *khámár* what is raiyattí—admitting that to be the case—I ask, why should the zamíndár be compelled to purchase his own land again in order to exercise the right of ownership over it? I think that the provision contained in the Bill of the Hon'ble Mr. Reynolds was more equitable. While conceding the right of transferability to the raiyat, he would not take away from the zamíndár the right of proprietorship; I believe his Bill provided that no occupancy tenure should be transferred without the consent of the zamíndár. I say such a provision would not clash against the leading principles of the Bill, while it would secure the right of the zamíndár to elect his own tenant. I leave it to the Council to imagine what the position of a zamíndár would be if this provision were put into force by the raiyats in any large number of cases. Take, for instance, the case of the person purchasing an estate for two lákhs of rupees on a calculation of so much annual return. Well, he calculates the interest and makes a simple money investment upon a certain percentage of profit. He holds this estate for five years. After that, when this Bill becomes law, a number of occupancy-tenants come in and tell the zamíndár, 'We have sold our holdings to such and such persons for so much; if you will pay us the price we will sell the lands to you, otherwise you must forego your right.' Of course the zamíndár, in order to keep away inimical tenants, would, if he had the means, buy up the tenures. But what is his position? He has, firstly, paid the full price for the estate, and now he must pay again for these lands if he wishes to exercise the right of pre-emption. What return does he get? *Nil.* As the Bill provides, he must let out the land at the same rate and, perhaps, even less. Now, I wish to ask the Council whether such a provision is fair, just or equitable.

"With regard to enhancement of rent, I confess I do not clearly understand the very complicated provisions which have been made on this subject. As far as I understand the Bill, it appears that, as a rule, the maximum of rent shall not exceed twenty per cent. of the gross produce. Tables of Rates are to be prepared, and, if applicable, they shall be the guide. If not, the proportion-theory shall, to a certain extent, be resorted to, and then the maximum of twenty per cent. should be adhered to, that was to say, as regards occupancy-tenants. Now, as regards the Tables of Rates, I hope the enquiries made by the Bengal Government will satisfy the Council that it will not be worth while to go to the trouble and expense of preparing these Tables of Rates. I am indebted to the courtesy of His Honour the Lieutenant-Governor for copies of the reports of Mr. Finucane and Bábú Párbati Charan Rai. In the report of Mr. Finucane, this is the conclusion he arrives at with reference to the tracts he enquired into:—'The rate varies from four to one hundred and odd.' So that the ascertainment of a uniform rate of rent which will apply to all holdings is impracticable, and yet the Bill contains provisions for an enquiry into rates, and I believe the cost of the enquiry is to be borne by both zamíndárs and raiyats. I do not see the necessity for such an enquiry, nor the justice of charging the zamíndárs and raiyats with the cost. With regard to the enquiry of Bábú Párbati Charan Rai, I find that he reports that the rate of rent has not varied from the days of the Permanent Settlement in certain tracts which he has enquired into. Now,

here is one proof also of the moderation with which the zamíndárs in some districts have treated the question of rent. Then, as to the twenty per cent. maximum, it is quite true that I, in another capacity, had recommended twenty-five per cent., but I confess I am not prepared to accept the recommendation of His Honour the Lieutenant-Governor for twenty per cent. The proportion of rent in Bengal has varied very much. At the time of the Permanent Settlement, as I find from a Minute by Sir John Shore, it varied from one-half to three-fourths of the value of the gross produce. At the present day, the proportion has been considerably reduced by rise in the value of produce. In the Eastern districts, I am inclined to think this proportion of rent may not be unacceptable, but in the Western districts it will be strongly objected to. There, I believe, the proportion is not less than one-third. In Bihár, it is much higher, and varies, I believe, from seven to nine annas in the rupee. Therefore, the twenty per cent. maximum, if sanctioned by law, will be a source of gross injustice to many zamíndárs in these parts. When I recommended twenty-five per cent. I did not for a moment suspect that the Government would go lower down, and I observe that the Rent Commission accepted my recommendation. But it is necessary for me to add that most of the zamíndárs did not agree with me, and did not consider twenty-five per cent. fair or just. The rules which provide for the settlement of rent of the ordinary raiyat, or the tenant-at-will, will be practically a bar to enhancement. The rules have been so framed that either the ordinary raiyat or the tenant-at-will will become, by force of circumstances, an occupancy-raiyat, or will leave the land with both his pockets or hands full. Now, from the time of the Permanent Settlement, a broad distinction had always been made between *khúdkásht* and *paikásht* raiyats, that was to say, between resident raiyats, and tenants-at-will will. But this Bill makes away with that distinction by importing certain ideas which are entirely foreign to the land-system of this country, and which I cannot help saying have been apparently borrowed from the Irish land-law. In the first place, the ordinary raiyat or tenant-at-will, according to the customs of this country, is not entitled to compensation for improvements. This question of improvement is a very large one. In this country, if a raiyat wishes to make any substantial improvements for the purpose of cultivation or manufacture, he generally takes a long lease, and secures his right, and then makes the improvements he needs. That has been the general practice. Ordinarily few improvements are needed for the cultivation of the soil. Nature has been so bountiful that if you merely scratch the soil in many parts of the country mother earth will yield her fruit. But this Bill introduces the novel idea of compensation for improvements. Now, what are the improvements that a tenant-at-will generally makes? I should feel obliged if any hon'ble member present would kindly enlighten me on this subject. As far as I am aware, irrigation is very little needed in Bengal Proper. Embankments are here and there needed, but for the most part they are made by the zamíndár. Would you consider those little ridges which separate the fields one from the other as improvements? and would you like to give to the raiyat a new handle for litigation, by inciting him to find out improvements which had never before entered his unsophisticated mind? I again say that, by bringing in this chapter of improvements, you will simply drive the raiyat and the zamíndár to the chapter of litigation. That is one of the weapons placed in the hands of the tenant-at-will to use against the zamíndár, because, if the zamíndár must pay for improvements before he can enhance the rent of a tenant-at-will, he must perforce desist.

"But this is not all. If the tenant-at-will should refuse to pay the enhanced rent, the zamíndár must pay him ten times the amount of the proposed annual enhancement by way of compensation for disturbance, or forego the right. The tenant-at-will, will by this unnatural process of law, become an occupancy-tenant.

"Now, what right has the tenant-at-will, who is a creature of to-day or yesterday, to demand from the zamíndár a compensation for disturbance as it is called? He will have the right to relinquish the land if he chooses, but the zamíndár will not have the right to eject him. This provision I say is open to three objections. In the first place, the rich zamíndár, who alone can pay the value of improvements and compensation, will be subjected to so much fine if he wishes to keep the land in his own possession and prevent the tenant-at-will from acquiring occupancy-right. The poor zamíndár, who can not pay, will be obliged to put up with this forced occupancy-right, and in every case the zamíndár and the raiyat will be driven to litigation. Now, it is well known to the hon'ble Council that, as matters go, there are abundant causes of dispute between the different classes of the agricultural community, and is it right and proper that this new idea should be forced into the unsophisticated minds of our raiyats? The practical effect of the provisions I have commented upon will be the destruction of proprietary right, and the deterioration of private property.

"I have already alluded to the distinction which has been made between *khámár* and *raiyatí* land, and I only wish to draw your attention to the provisions of the Permanent Settlement Regulations, giving the zamíndár the right of disposing of his lands, with the exception of dependent, istimarárí and mukarari, in the best way he might think fit. Section 52, Regulation VIII of 1793, says:—

'The zamíndár, or other actual proprietor of land, is to let the remaining lands of his zamíndárí or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following.'

"This clause to my mind proves two things. In the first place, the zamíndár had an

absolute right to dispose of all lands, except independent taluqs, in the best way he could, and, in the next place, it recognised the right of the zamíndár to enter into contract. In fact, from 1793 to 1859, I find repeated enactments in which the zamíndárs are exhorted to enter into contracts with the raiyats, and if the interchange of pattás and kabúliyats had been regularly enforced by Government, there would by this time have been such a record-of-rights as would have prevented the necessity of over-riding contracts.

"Now, I have said that rack-renting, as it is generally understood, is not known in Bengal Proper. If the country had been so rack-rented as has been represented, there could not have been so much prosperity as the Government has from time to time testified there is. I find that Sir Ashley Eden, on assuming the reins of the Bengal Government in 1877, made a tour through the Eastern districts, and in a memorable speech he then said :—

'Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world ; well-fed, well-clothed, free to enjoy the full benefit of their labours, and able to hold their own and obtain prompt redress of any wrong.'

"Similar testimony with regard to other parts of Bengal is, I believe, to be found in the Administration Reports of the Bengal Presidency. I need hardly remind the Council that, when Sir Ashley Eden left the country last year, he, in defence of his excise policy, made this broad statement, that the development of the excise revenue was the best test of the growing prosperity of the agricultural population ; and I ask whether this prosperity could go on if the raiyats had been handicapped, or if they had been depressed by rack-renting, as is sometimes alleged ? I am afraid I have trespassed upon the time of the Council very long, but I hope I may be permitted to notice a few other points.

[At this stage the Council adjourned for lunch, and on their re-assembling the hon'ble member continued his remarks as follows :—]

"My Lord, when I closed I had alluded to the question of rents in Bengal. I said that it could not be rightly urged that, as far as Bengal Proper was concerned, it was rack-rented. Now, it may be interesting to enquire what is the condition of the peasantry in the other Provinces of India, and such an enquiry may throw considerable light on the present subject. I hold in my hand a pamphlet on the effects of periodical revision of the land-tax in India. It is from the pen of a well-known Indian publicist and sincere well-wisher of this country, Mr. John DaCosta, who was senior member of the late firm of Messrs. Ashburner and Co., and with whom I have had the privilege of being long associated in the work of Indian reform. Mr. DaCosta, in referring to the Madras Presidency, says :—

'Beginning with Madras, the last Administration Reports from that Presidency show that the arrears of revenue, annually recovered by the sale of land, steadily increased from Rs. 31,860 in 1865, to Rs. 6,65,091 in 1872. This rapid rise, showing the growing difficulty of collecting the land-revenue, indicates the impoverishment of the cultivating classes.'

"Then, with reference to Bombay, he says :—

'If we next turn to Bombay we find that, in consequence of unsatisfactory reports regarding the collection of the land-revenue in that Presidency, the Secretary of State has quite recently sent out orders authorising a reduction of twenty per cent. in assessments in the Sholapur district. That the assessments there have long been excessively oppressive may be seen from a Minute of the Government of Bombay indited about seven years ago, in which it is recorded that 'the Government had read with much concern the opinion expressed by the Collector of Sholapur as to the undue pressure of the revised rates, in consequence of which a large quantity of land had been put up for sale in default of revenue, much of which found no purchasers.'

"A reference to the Bombay Revenue Commissioners' reports will show, moreover, that 10,880 acres of cultivated land in Surat, and 25,035 acres in the fertile Province of Guzarát, were abandoned in 1872 and 1873, when the revised assessments were enforced ; and that, while the unfavourable year 1871-72 was followed by two exceptionally propitious seasons, the depression of the people, as manifested by the relinquishment of their fields, had continued. From the same causes the revenue collected in the Northern Division in 1874 decreased, although the rates had been enhanced ; and official reports of the same period from Puna state that 'the amount of land-revenue unrecovered was very considerable, and that, in order to realise the amount actually recovered, it was found necessary to sell up many occupancies.' Further, a memorial was addressed to the Viceroy in 1875 by some 3,000 landholders in the Bombay Presidency, complaining that the demand made upon them for land-revenue was out of proportion with the productive value of the land ; and that, owing to their inability to satisfy it, many had been deprived of their estates, cattle, and other moveable property, while their tenants and cultivators were on the verge of starvation. These reports materially help to account for the appalling severity of the famine which shortly afterwards devastated the Bombay Presidency, showing as they do, that the very life-blood of the people had been sucked in the process of raising the land-revenue.

"Next, I turn to the North-Western Provinces. You know how harassing a process a settlement work is, and how much the people suffer as long as its operations go on. Mr. DaCosta quotes the following from an official memorandum of Sir Auckland Colvin, who writes :—

'Settlement-operations have now, in one district or another, extended over nineteen years. By the time the settlement of Banda falls in and is disposed of, twenty-six years will have elapsed from the date on which the two first districts were placed in the hands of a Settlement-Officer. Others were begun twelve years ago and are not yet sanctioned ; one of these is not even yet completed. These facts are significant to those who know what the settlement of a district means ; the value of property depreciated, until the exact amount of the new assessment is declared ; credit affected ; heart-burning and irritation between landlord and tenant ; suspicions

of the intention of the Government; hosts of official underlings scattered broadcast over the vexed villages. . . Nothing can equal the injury inflicted by a slow uncertain settlement, dragging its length along, obstructed by conflicting orders, harassed by successive administractions, and finally threatened with annihilation at the moment when it seemed to have nearly finished its course. Little wonder that we hear of the land needing rest.

'Who have hitherto been connected by so kindly a bond in one of the greatest political dangers of the day * * * The Commissioner of Allahabad, adverting about the same time to the depressed condition of the Futtehpore district, stated that 'the imposition of a ten per cent. cess in addition to the ordinary land-tax fell heaviest on the villages which were least able to bear it, that many villages broke down, and many more were threatened with ruin.' * * * From the District Collector's report it appeared, moreover, that many landlords who had failed to pay up the revenue were imprisoned; their personal property was sold, and their estates were attached for arrears of revenue. * * *

'The Collector of Cawnpore, referring to the revised settlements, stated:—'The margin left for the cultivator's subsistence is less than the value of the labour he has expended on the land. This district has the benefit of water-communication by both the Ganges and the Jamna; it is intersected by the East Indian Railway, and partly traversed by the Ganges canal; yet the land is only worth five years' purchase, and the state of the average cultivator is one of hopeless insolvency and misery.' The Lieutenant-Governor, in his Administration Report published in 1873, said that, while travelling, he was forcibly struck with the wretched condition of the Lallatpur district 'in which many estates were so depopulated, and so much land had fallen out of cultivation, that the assessment has become very severe.'

"The extracts which I have read from this pamphlet unmistakeably show what is the condition of the tenantry in the other Provinces of India. One fact is well known to this hon'ble Council. Relief Acts have been enacted by this Council for the benefit of agriculturists of the Dekkhan and of Jhánsí; but happily things have never come to anything like that state in Bengal, so as to require exceptional legislation. On the contrary, as I have shown from the words of Sir Ashley Eden, and as is evident from the annual Administration Reports of Bengal, the prosperity of the agricultural population of this Province has gone on uninterrupted, from year to year, since the revolution of prices commenced in 1853, or since the Crimean war. Now, if the condition of the tenantry of Bengal is so prosperous, it cannot be reasonable to suppose that the land-law has pressed upon the springs of industry. I think, my Lord, it would be interesting if we could know what proportion does the revenue levied upon the peasantry of Madras, Bombay, and the North-Western Provinces bear to the value of the gross produce of the soil. Is it one-half, or one third, one-fourth, or what? I have no accurate information on the subject, but an enquiry into the matter may clear up doubts which exist upon the subject. I, however, know this much, that while the enhancement of rent has come to almost a deadlock on private estates in Bengal, under the working of the proportion-theory of the High Court, the enhancement on Government estates in *khás mahál* has been going on of late years at a tremendous rate. I find that within the last few years—I cannot give the exact period—there has been an increase of rent in Chutiá Nágpur estates from one hundred to three hundred per cent; in Tipperah I hear that the increase is much higher, and matters are much worse in Chittagong. In Jalamati, in the district of Mednípur, the increase has, I believe, been from sixty to eighty per cent. On the other hand, the Government expenditure on improvements in the *khás mahál*,—I believe it was stated in an official paper sometime ago—has been very limited. And while I speak of the Government estates, I think it right to point out that, while the Government goes on increasing the rent on its own estates, and while the Government imposes such hard *kabúliyats* upon its own tenants, the Government enjoys peculiar facilities for the settlement and recovery of its own rents. It is well known that the Government employs almost the same agency as the private zamíndár employs for the management of its estates. The tahsíldárs of Government estates generally come from the same class that supplies the *náibs*, *gumáshtas* and other ministerial officers of the zamíndár's private establishment. But while the Government manages its own estates through these men, it is not content with the ordinary powers which a private landlord enjoys; takes advantage of exceptional powers for the realization of its own rents. Now, it ought to be borne in mind that the Government exercises a prestige, by virtue of its position, which the private landlord can never command. First, there is always a sort of intimacy between the Police and the revenue establishment of the Government, which is unseen by the outside public, but which is fully felt by those coming within the operations of the revenue establishment. Notwithstanding all these advantages, which the private landlord cannot claim, the Government has a summary procedure for the settlement of rent, and a summary procedure for the recovery of rent. Now, I ask, if the Government considers it necessary to have recourse to all these exceptional methods for the management of its own estates, is it not manifestly its duty to give similar facilities to the private zamíndár, who is bound to pay in the revenue under the stern sunset law? That is to say, if the zamíndár fails to pay in revenue before sunset on a particular day, he is liable to be sold out at once. Therefore, is it not fair that the zamíndár should have the same facilities for the settlement and realization of rent? It may be said that the Government cannot place the same confidence in the servants of the zamíndár as it can in its own servants. Now, the Bill prescribes certain forms in which the zamíndárí accounts are to be kept and receipts are to be given, and if, with all these safeguards, the zamíndár's servants should still commit fraud and wrong, cannot they be checked by the imposition of penal damages on the zamíndárs in any case in which they may abuse their powers? If, by taking such precautions, the procedure for the settlement and recovery of rent could be assimilated, whether the demand be for Government or for the private landlord, is a point deserving of the fullest consideration of this Council. With regard to the realication of rent the hon'ble and learned Law Member has said that it is not practicable to secure the ends of justice by a summary method. Now, the Government has, from

the days of the Permanent Settlement, always recognised its duty to be to help the zamíndár in the realization of rent. So long ago as 1795 the Government thus declared :—

'Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of bringing their rents and revenues with equal punctuality, and that the persons by whom they may be payable, whether under-farmers, dependent taluqdárs, raiyats or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good.'

"Increased punctuality on the part of landholders in the discharge of their duties was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795.

"From 1793 to 1859, there was a double procedure, a summary procedure, and a regular procedure through the Civil Courts, and it was left to the option of the landlord and tenant to have recourse to either. This object was thoroughly discussed when Act X of 1859 was passed into law, and Sir Barnes Peacock then raised the question that the Civil Courts ought to be invested with jurisdiction, and he proposed to take away the jurisdiction of the Revenue Courts. The majority of the members of the Council were opposed to the change, and Mr. Currie openly declared that if the jurisdiction was transferred to the Civil Courts, he would rather abandon the Bill than submit to it. Sir Henry Ricketts, Mr. Harington and other members were also opposed to it. Well, the law was passed leaving the jurisdiction to the Revenue Courts intact; but in 1869, Sir William Grey carried out the transfer of jurisdiction to the Civil Courts. I by no means take objection to this transfer of jurisdiction. I think that, with their legal training, the Judges of the Civil Courts are admirably fitted to decide questions of right and title which are involved in the trial of rent-suits. But, if it be not deemed desirable that the jurisdiction should again be transferred to the Revenue Courts, surely the Government ought to consider whether the procedure cannot in some way be simplified. The proposals made by the hon'ble and learned Law Member will not remove the complaint of delay to any material extent. Now, knowing the origin of the proposal for a change in the land-law, namely, the complaint of the landlords of delay in the trial of rent-suits, and remembering also the promise which Sir George Campbell gave when charging the zamíndárs with the collection of the road cess for the simplification of the procedure for the realization of rent, and the repeated efforts made by successive Lieutenant-Governors in that direction, I think it is very disappointing that the zamíndárs should be told at this time of day that they cannot expect a summary procedure for the realization of rent, and that it is not practicable to do so consistently with the ends of justice. I have just now told you that in the *khás mahál* Government has a summary procedure of its own, and surely, what is good for the *khás mahál* should be equally good for the estates of private landlords. If justice is not sacrificed by the summary procedure applicable to the *khás mahál*, why should it be held that justice will be sacrificed by extending the same procedure to private estates? If there be any loop-hole through which the ends of justice may be defeated, by all means stop those loop-holes; but do not summarily reject the prayer of the landlords for a summary trial of rent-suits.

"I think, my Lord, I have touched upon the salient points of this Bill. There are many other points on which I cannot dwell at present for want of time. Perhaps they may be best considered in Select Committee; but there is one other point I should like to notice. Whatever difference of opinion may exist as to the different provisions of this Bill, I am glad to say that I am at one with the hon'ble and learned Law Member upon this, that we take our common start from the Permanent Settlement Regulations. I believe his object is to bring back the landlords and tenants in Bengal to the *statu quo* which existed at the time of the Permanent Settlement, and I should very glad to see it restored. In fact, I look upon the Permanent Settlement Regulations as the Magna Charta of the rights of zamíndárs and raiyats, and I would earnestly wish that that charter should be respected by both parties.

"The two main questions which underlie the scheme of legislation before us, are, what is the position of the resident raiyats and of the tenants-at-will, and what are the rights of the zamíndárs?

"Upon these two important points I will, with your Lordship's permission, read two extracts: one from Harington's 'Analysis', and the other from a Minute of Mr. Seton-Karr, late a Judge of the High Court. I find these passages in Harington's 'Analysis', pages 422-23, Volume 3:—

'Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure, be considered as hereditary tenants; and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will, and having only a temporary, accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class, and, when oppressed, easily abandon the land to which they have no attachment.'

"It will thus be seen that there was a broad distinction drawn between the *khúdkásht* and *paikásht* raiyats and that, in the days of the Permanent Settlement, the former paid more than the latter. Again he says:—

'It would be endless to attempt the subordinate variations in the tenures or conditions of the raiyats. It is evident that in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible.'

"In other words there was no fixed law or custom for the determination of rent, which was left entirely to the discretion of landlord and tenant. With regard to the rights of the

landlords, Mr. Justice Seton-Karr, to whom I have alluded, does not take an exaggerated view. This is his rendering of the Permanent Settlement Regulations on this subject :—

'The zamíndár, at first sight, appears certainly possessed of very high privileges and powers. He is at liberty to impose rents on every bígha of land included in the area on which the revenue for which he is responsible is assessed. He can *proprio motu*, and without having recourse to an action at law, dispossess all persons who set up rent-free grants of a date subsequent to December 1790. The lands of all raiyats who die without heirs, or who abscond, revert to him. He has the undoubted privilege of levying and assessing rents at a higher rate on the better qualities of land, and on some of the more valuable kinds of produce. His title to demand rents from tenants who are mere occupiers without any title, is, it has been judicially held, barred by no length of time, not even by sixty years' abstinence from demand, inasmuch as the mere liability for rent is held to be a constantly recurring cause of action. As regards his distinct proprietory right in some of the very products of the land, there is in all the ordinary pattas which the zamíndár issues to raiyats, an invariable restriction against the cutting of trees by the raiyat, which might even seem to imply that the right to the timber and the fruit trees belongs not to the raiyat, but to the zamíndár. Tanks are not usually dug, nor are new roads cut, without his permission, and the former are sometimes excavated at his expense. This is one of the few instances in which I have known zamíndárs lay out any money on the land. The motive, however, is generally a pious one. The theory that the rent-bearing area of the estate is not to be reduced without his permission is, in this and other instances, namely, in the excavation of tanks and the formation of roads, openly recognised. The zamíndárs' right to rent includes not only agricultural produce leviable in kind or in money, but rents from fisheries in running streams and in marshes from the actual produce of the forest, and from the very droppings of the trees.'

"This is the interpretation of the Permanent Settlement law by a learned Judge of the High Court, who was by no means a friend of the zamíndár, and I ask whether the rights and privileges which the Permanent Settlement Regulations conferred on the zamíndárs are respected in the Bill before us. I ask whether, while professing to restore the *statu quo ante*, which existed at the time of the Permanent Settlement, my hon'ble and learned friend has not practically gone in the opposite direction. This is not the first attempt which officers of Government have made to legislate in a direction not quite consistent with the guarantees of the Permanent Settlement. But the Government has always scrupulously respected the solemn compact entered into by it with the landholders of the country. In 1819, I find the Government, through no less a personage than Mr. Holt Mackenzie, himself a high authority on the Revenue law of Bengal, Secretary to Government, declared as follows, in a letter, dated the 22nd of April 1819 :—

'But it is the firm determination of Government to maintain inviolate the rights and privileges bestowed on the zamíndárs by that settlement, notwithstanding any errors or abuses that may now be discovered to have been practised, and although the profits of any one from his estate should be many lákhs and his jama only a few rupees, yet Government will on no pretence break its agreements.'

"In the words of Mr. Holt Mackenzie I appeal to your Lordship, and I am confident that when the whole question is considered by your Lordship and this hon'ble Council, the rights and privileges conferred and guaranteed by the Permanent Settlement, both on the zamíndárs and raiyats, will be preserved intact and inviolate. I observe that, at the present stage, the Bill is to be referred to a Select Committee, and I confess I do not quite understand my position with respect to the Bill. I have said there is necessity for legislation on the subject, at the same time, I have denied the necessity for a general revision of the rent law. On the other hand, I see that the Bill, in its skeleton form, has received the assent of the Government of Bengal, the Government of India, and Her Majesty's Secretary of State. I see that the Bill, as laid before the Council, contains provisions which are repugnant to the principles of the Permanent Settlement, and which I, therefore, consider it my duty to oppose. But the question is whether, the Bill having already received, as regards its main principles, the assent of Her Majesty's Government, it will be open to a Select Committee to consider those provisions which constitute the leading principles of the Bill, and whether the Government will be prepared to make any changes in the substantive part of the Bill, when by the rules of the Executive Council, which require the previous assent of the Secretary of State to any project of legislation, the members of this Council are practically precluded from considering any fundamental principles of a Bill so sanctioned. I, for my part, do not see any advantage, so far as these main points are concerned, of referring the Bill to the Select Committee.

"Of course, as regards details, the Select Committee will be the proper body to settle them. Be that as it may, I take it that when a Bill of this momentous nature is submitted to public criticism, the Government will not decline to consider any representations or suggestions which may be reasonable or just, though such suggestions may be opposed to their previous conclusions. I feel grateful to your Lordship that arrangements have been made for giving a wide publicity to this Bill, and for inviting public opinion upon it; but I think the public ought to receive an assurance that their criticisms and representations will not be thrown away, because the leading principles of the Bill have already been discussed and determined upon by the Government of India and the Secretary of State. If the Select Committee be tied as it were hand and foot in regard to the fundamental principles of the Bill, then public discussion will be of little advantage, for whatever the public may say or write, and however reasonable their suggestions may be, the Select Committee will not be at liberty to make material alterations in the Bill.

"And now, my Lord, in bringing to a close my wearisome address, for which I apologize to the Council, I venture to express a hope that, as this is a measure of the greatest importance to both landlords and tenants in this Province, the like of which had never before, I may say, engaged the attention of the legislature since 1793, that this hon'ble Council will not seal with its sanction this Bill, without giving to it a patient, attentive and full consideration, and that it will not consider the object of the Bill as merely an attempt to adjust the relations between landlord and tenant, but also as a matter involving deep economic problems, as a matter involv-

ing the sacred question of the plighted faith of Government, and as a matter involving the prosperity and happiness of sixty millions of the population of Bengal."

The Hon'ble Mr. Evans said :—I do not propose to detain the Council at any great length on this question, and I am glad to find that the Hon'ble Mr. Kristodás Pál is at one with me on at least one subject, and that is the necessity for legislation. I do not think that any one who has seriously and attentively considered this subject, and has seen how matters were going on, can help feeling that there is a necessity for legislation. When it is found, as I myself have found, that the Law Courts have come to a deadlock, and that they can do nothing with the cases for enhancement and settlement of rents that come before them; that such enhancements are introduced by illicit means, where the zamíndárs are strong and the raiyats weak, and that just demands are resisted where the zamíndárs are weak and the raiyats strong, then it is evident that a very serious state of things has arisen—a serious state of things for the Government of the country, and a serious state of things for the landlords themselves. The mass of the raiyats in this country are ignorant people, as a rule, incapable of combination, except on a very small scale, although they have begun to show, in some parts of the country, that they are learning the advantages of combination, and can combine in an effectual manner against the landlords. If you find, on the one hand, the landlords beginning to use other than legal pressure to enforce their claims, and the tenants beginning to combine to resist, by means other than legal, those claims, you have a state of things which might, if left alone, develop into a serious danger. We all know there is nothing more troublesome or difficult to manage, when once it has begun, than an agrarian agitation, and, therefore, I think that, in the interests both of the landlords and the raiyats, legislation of some kind is clearly necessary.

"The landlord has great difficulties in enhancing and settling his rents, and difficulties of various sorts in the collection of them. Therefore, as everyone seems agreed on the necessity for legislation, the question really resolves itself into one of the length to which legislation should go. The hon'ble member who last spoke has said that this matter was formerly discussed, and it was felt there was necessity for some legislation for the benefit of the zamíndár, and that successive Governments found themselves unable to give the relief wanted for various reasons. He also said there were two points on which legislation was required, namely, for the recovery of rent, and the settlement of rent. But there, my Lord, is the hitch. How are you to settle the rents unless you get at the rights of the parties? And that is why each Lieutenant-Governor found himself unable to settle the rents. They could not settle the rents until they they found some proper method of settling them, and they could not give the zamíndár summary power to recover rents till it was settled what the rents were. The zamíndárs, no doubt, would be glad if they could have a summary procedure, which enacted that the tenant was to be sold up for whatever the zamíndár considered to be his rent. But it was impossible for a Government which had the charge of all these millions of raiyats to grant that boon—a boon which might in the end turn out to be an exceedingly fatal one to the zamíndár himself. Therefore it is that Commissions have been issued, and all this mass of evidence before us now has been collected. I quite agree that the work of these Commissions is wanting in statistics. I cannot, however, go with my hon'ble friend as regards the want of statistics about the question of transferability, because we find pages 365 to 373 all taken up with divers transferable tenures, and the districts in which they are transferable and the number of transfers which are registered. There are a certain number of valuable statistics in regard to transfers; on other points there are no statistics. This is a great disadvantage. But this is not to be imputed to any fault of the Commission, because, as a matter of fact, there was no means of procuring these statistics. The statistics as to the occupancy of the lands are to be found nowhere except among the zamíndárs themselves, and if there is any body which can give these statistics, it is the Zamíndárs' Association. Well, now, this being so, the question has been forced before the Government, after careful consideration, how are rents to be settled? And here I may observe that my hon'ble friend Mr. Kristodás Pál appears to assume, with regard to the great bone of contention, the position of occupancy-raiyats, that Act X of 1859 has practically accorded that right to a large proportion—he thinks ninety per cent.—of the tenants of Bengal. If that is so, there can, as already stated, be very little reason for extending it further. But what is the fact?

"If ninety per cent. of the tenants in Bengal have got the occupancy right, the fact remains that they cannot prove it, and it would be ruin to most of them to try to prove it. Now, of course, if you get a class of men and give them certain rights, but place them in such a position that, having those rights, and knowing that they have them, yet they are unable to enforce them, there arises a very lamentable position. If a man has a right and cannot press it, what will he do? If there are many of them, they will create disturbances. Therefore it is that, looked at from this point, the Bill appears to be a Bill, not for overturning the Permanent Settlement, but for securing to the ninety per cent. of the raiyats in Bengal some means of getting the benefit of this right or occupancy declared by Act X, and being able to assert it. I saw in a letter not very long ago, in one of the newspapers, a statement by a zamíndár that most of the raiyats on his estates had morally a right of occupancy. That is a curious expression. It means they had got it, but had not got it; and that, practically, is no doubt the state of affairs described by my hon'ble friend to-day. There is the moral possession of a right of occupancy, unaccompanied by an actual or fructuous possession of it. Now, if this is the state of the case, it is not really so great a blow to the zamíndárs as we have been led to suppose, to pass a law by which the difficulties of proof should be minimized, by which

the onus of proof should lie less heavily on these tenants, and by which they may be able to get a more effectual enjoyment of this already existing moral right. I understood my hon'ble friend the Mahárájá of Darbhangá to say that, as a matter of fact. he thinks it would not be a bad thing that raiyats should have some sort of fixity, and I think that is the feeling of a great many zamíndárs. If they could get a fair settlement of their rents, and get rid of all the litigation in which they are at present involved, they would not look upon such extension of the right of occupancy as is given by the Bill with any great alarm. Now, this being the case, we are invited by my hon'ble friend to consider this matter as if it were some interference with the Permanent Settlement, and the first thing he asks us to consider is the position of the zamíndár and raiyat, and he lays claim on behalf of the zamíndárs to what he terms the actual property of the land, and his case, as I understand it, is that, antecedently to the Permanent Settlement, the zamíndárs were absolute owners of the land; that they were subject to payment of revenue to the Government, but that they were absolute owners, and that this right was not then created but confirmed, and exists to this day, and that Act X of 1859 was aserious interference with that right. I cannot agree with that view of the matter. As regards the position of the zamíndárs before the Permanent Settlement, I would refer to a Minute of Lord Cornwallis.

'Under the former practice of annual settlements zamíndárs who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Díwání, been dispossessed in numberless instances and their lands held khás or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zamíndárs in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.'

"Well, it was so; it was a delusive possession of property. However, I think it is quite clear that, whoever they were, they were not absolute owners, even taking it from the point of view as between themselves and the Government. But I do not really care to discuss that matter, because, whatever was their position as between themselves and the Government before the Permanent Settlement, it is clear that, as between themselves and the Government, the Government did give over this right of making any further demands upon them and constituted them, so far as Government was concerned, absolute owners. That was the position in law. I have no doubt at all that a very large number of them were hereditary zamíndárs, and many of them were members of the old princely houses, who had originally (as ruling chiefs) rights in the land; I agree that it was a hereditary interest, and an interest which would pass to their children. But this did not at all conclude the question whether the raiyats had any interest. The fact is, that land is capable of having a number of interests in it. As between the Government and the zamíndár, if the Government surrenders its rights in the land to the zamíndár, the zamíndár becomes the actual proprietor of that land so far as the Government is concerned. But when we come to the question whether the raiyats had anything to say in reference to this land, that is another thing altogether. What do we find was the old customary land-law of India? I am quoting from memory now, but even Menu lays down that ownership in land arises from the reclamation of land, and I think you will find that even that right of ownership was not a full and absolute dominion, but that a right, subjects to the rights of Government and some other persons, did arise on the reclamation of land, according to the old custom of Hindústán, and so we find it to be the feeling of the country to this day.

"Zamíndárs held certain large estates, and under them were the raiyats, and the raiyats from time to time reclaimed jungle and then held lands under the customary law of India. What was that customary law. The first thing was that, having been recognised as raiyats, they had a right to sit there at pargana rates. That right did not interfere with the right of property of the zamíndárs. The right of the zamíndár was absolute as between himself and the Government. But those rights did not cover all the rights in the land, as other people also had rights in that land. My hon'ble friend has relied on a passage from a judgment of Lord Lyndhurst. Now this passage which has been read comes from the well-known case of *Freeman* v *Fairlie*. It was a suit brought in the year 1828. The decision in it was that land in Calcutta descended as a free-hold inheritance to the heir, and did not pass to the personal representative. That was the point Lord Lyndhurst had to consider, and his remarks were all made in reference to it. It appears that one Susannah Oldham died, leaving three houses in Calcutta. These three houses she bought from different people. But, as was the custom in those days, she got a pattá from the Collector of Calcutta. She died and left an executor, and differences having arisen between this person and those interested, the question arose whether the houses passed to the heirs or the personal representatives, whether this was real estate or whether it was personal estate. They went before the Master and the Master made his report, and it was decided that the English law applied, and that it went as a free-hold inheritance. This is a very interesting question, but has really nothing to do with the question now under discussion.

"It was contended in that case that no interest which could be held in land in India could be said to amount to an estate in fee-simple according to English law, although English law had been introduced to some extent into Calcutta, and it was said that all holdings under the East India Company were too precarious to constitute so high an interest as an estate in fee-simple, for various reasons which may be read at length in the report.

"It was *apropos* of these contentions that Lord Lyndhurst remarked that a perusal of Bengal Regulations had led him to the conclusion that the interest of the zamíndárs in land under those Regulations was an absolute proprietorship and not such a precarious or temporary interest as had been suggested. His object was to show that, if such an interest was vested

in an Englishman in a place where English law applied, it would be an estate of inheritance in land descendible to the heir, and not something in the nature of chattel interest divisible among the next-of-kin. If Lord Lyndhurst had before him a question as to the relative position of zamíndár and raiyat in a zamíndárí, his decision would have been entitled to the highest respect, and the hon'ble and learned mover might well be uneasy if he had gone against so high an authority. But in truth the passage cited is only another instance of the danger of citing isolated passages from judgments without considering the point discussed in those judgments.

"In the *resumé* given by Mr. Justice Seton-Karr of the position of the landlord, just read by my hon'ble friend, he points out that the zamíndár has a right to the rent which is barred by no length of time. Here is a curious thing. If you have an absolute ownership, and if another person holds possession for twelve years, it becomes his own, because he has adverse possession. But the rule laid down by Mr. Seton-Karr was that, if it be in the possession of a raiyat, and the raiyat cultivated it, not alleging himself to be a zamíndár, he does not hold adversely. Now, although he sits there for sixty years, his title is not adverse, and the landlord does not lose his right even though he may omit to collect the rent. What is the reason? That originally the status of the raiyat and the zamíndár did not depend on contract at all. There was one person who engaged with the Government for the land and obtained an assignment, temporary or permanent, of the right of Government to obtain revenue from every bíghá of cultivated land not specially exempt by a grant from the ruling power; then squatters came and squatted; they never dreamt of saying they were zamíndárs, but simply raiyats; if the landlord came and asked for rent they would pay what their neighbours paid; if they reclaimed the land, they would ask to pay less, and generally would be allowed to pay less; but if they took possession of cultivated land, they would have to pay the pargana rate or go away. But it was not possible to say that these persons were anything else but raiyats. Tenancy in England was by contract, and if a person comes and sits on your land and cultivates it, and has not made an express or implied contract, his possession is adverse to the landlord, and after twelve years he becomes owner of the land free of any obligation to pay anything to anyone. But this is not the case here. I know that Sir Barnes Peacock and other great authorities, who have taken a strictly English view of the question, have said that the relations between the zamíndár and the raiyat are similar to those of landlord and tenant in England. But many of the Judges—Messrs. Steer, Jackson, Seton-Karr and others—held that the relation of zamíndár and raiyat could be established independent of any contract. If that is so, it throws great light on the subject, and I think there are many other things which point to the conclusion that permanent cultivation of land in India by a person other than a zamíndár was sufficient evidence of a raiyatti holding according to custom.

"There has been much confusion arising out of the use of the term 'actual owner' or 'actual proprietor of the soil.' In many zamíndáris there is a zamíndár, a patnídár, a darpatnídar, and under them a *jangalburí* or an occupancy raiyat. Each one of these is an actual owner or proprietor of such interest as he has in the soil.

"But, say the opponents of the Bill—how about the waste-lands? There were no raiyats on the waste-lands. The zamíndárs by the Permanent Settlement became, as to the waste-lands, owners of their own former rights (if any) *plus* the Government rights, and as no one else had any rights they must have become absolute owners in the fullest sense, and able to do what they liked with their own.

"The answer is, the position of the waste-lands was not changed by the Permanent Settlement, save so far as the rights of Government were transferred to the zamíndárs. If, therefore, before the Permanent Settlement raiyats who reclaimed or settled on waste-land acquired any rights, raiyats who did the same thing after the Permanent Settlement would acquire the same rights and occupy the same status as they would have acquired or occupied had they settled before the Permanent Settlement.

"No doubt the incidents of a customary holding may be varied by actual contract (unless prohibited by law). But all original contracts which I have seen between zamíndárs and raiyats about to reclaim waste-lands have been contracts whereby the raiyats have obtained a right to sit at lower rates, either permanently or for a time, than the ordinary rates prevailing on the neighbouring cultivated lands. I have never seen or heard of any case in which a raiyat undertook to reclaim waste-lands on worse terms than the customary terms on which permanent tenants of adjacent cultivated lands were then holding.

"But I have seen and I have heard of many cases in which, from the power of the zamíndár and the weakness and ignorance of the raiyat, the successors of those who had reclaimed land on specially favourable terms since the Permanent Settlement have been unable to enforce or maintain those terms and have been reduced to the level of ordinary raiyats.

"It may be taken that all land reclaimed since the Permanent Settlement has been reclaimed either on the old customary terms without a written engagement, or on a written engagement more favourable to the raiyat than the customary terms.

"I will only make one or two further remarks. The most effective part of the hon'ble members onslaught on this question was his attempt at what I may call the *argumentum ad Governmentum*, in which he said that the Government had treated the raiyats on their khás maháls or Crown lands just as the zamíndárs had treated them, or rather worse, and that they had declined to recognise in the raiyats any higher rights than the zamíndárs had recognised, and that they had mercilessly enhanced their rents and evicted them if they did not consent.

"It is no argument to say that the Government in various departments have done the same thing. In speaking of the Government, it must be remembered that there are many

departments of the Government. From one point of view, you may have the Government sitting here consulting for the general good of the country and taking broad views of the question. On the other hand, there is a department which represents the Secretary of State, who represents the positive right of the Government in their property, just as in the case of Crown lands in England. When you deal with the Government in this capacity, I am sorry to say they don't seem to be the same kind of people as the Government of India in its broader capacity. I have seen the same thing at home. I have seen what I considered to be very hard and unjust conduct on the part of the Commissioners of Woods and Forests—conduct which was worse than would be expected of any private proprietor. They are in the nature of a Corporation which has to preserve the rights of the Crown, and they come to look on every body else as natural enemies who are endeavouring to deprive the Crown of its rights; and I have seen a good deal of the same sort of thing in India, and I am quite prepared to believe it is true, as many of the Government officials must know, that these officers often think it their duty to exact as much as they can. I am only suggesting this as an explanation of what has been said of the dealing of officials in Government and Court of Wards' estates. Suppose there is a substratum of truth in the figures brought forward by the hon'ble member, and it should be proved that enhancements to the extent of one hundred per cent. have been made on these unfortunate Government estates, I think the Board of Revenue, on learning of the existence of such things, would put a stop to them. But if the state of things is as has been stated to the Council it is certainly very deplorable. But it furnishes an argument against my hon'ble friend. If the Government officials, who have no personal interest in them, would do such frightful things by abusing the special summary powers entrusted to them, how much more will the managers of zamíndárs do them?

"I have not had time to go through the details of the Bill; but I think several grave and serious questions arise in reference to it. The question of compensation for disturbance and other important questions require serious consideration, and I offer no opinion upon them at present The practical working of the different clauses of the Bill have to be considered.

But the great thing is to try and secure, as nearly as possible, absolute data on which to proceed. I do not believe in the beneficial effects of any form of words, unless you have facts to act on. I believe that, before the present state of things can be set straight, a full record-of-rights will have to be undertaken. I know that is not a thing which my friend will be pleased to hear. But I do say that nearly one-half the litigation in Bengal arises from the impossibility of ascertaining facts. You cannot get at the rights of any question unless you can get at the real facts. Any number of papers may be produced,—jamabandís, jama-wásil-bákis and the like,—but they are frequently worth nothing. I don't say the zamíndárs have anything to do with the presentation in Court of untrustworthy documents; many of them are very respectable people, but the *náibs* or managers think nothing of fabricating a set of papers. Now, the records being untrustworthy and the oral evidence very worthless, it is very difficult for the Courts to decide the points which come before them. I believe most of the litigation will be rendered unnecessary if you can get in Bengal a real record-of-rights, and if you get rent receipts of a trustworthy character. All these things will practically diminish litigation, and then, if you get a settlement of rents by establishing Tables of Rates or otherwise, which would last for a considerable time, I do not think the zamíndárs will have any great difficulty in recovering rents, for the rent will be definitely settled. Under these circumstances, there will be very little use in false evidence, and judgment will be given, and in a month or so the holdings in default will be put up for sale. I think improvements can be made, for I think zamíndárs should have all reasonable facilities for the recovery of rent which can be given to them without causing oppression to the raiyats. If anybody can show any way of giving increased facilities in this respect, I think the zamíndárs ought to have the benefit of it.

"The Government demand is constant and inexorable, and the Government have kept in their own hands a summary and effectual process for realizing it from the zamíndár. The Government is bound, if possible, to enable the zamíndár to realize the assessment promptly from the actual cultivator. Had the Government from the first insisted that an authentic Government record-of-rights and rates should be kept up, and that a reliable system of recording payments should be enforced, there would be no difficulty in complying with the demand of the zamíndár; and it would be the clear duty of Government to do so. But unless the Government will resolutely determine to face this matter, it will never be able to do equal justice to the zamíndár and the raiyat: to give the raiyat proper protection is one duty; to give the zamíndár the power to realize punctually from the raiyat that rent or revenue which the Government exacts so punctually from the zamíndár is another duty. Neither of these duties can ever be effectually performed without an authentic record-of-rates and payments, and if this Bill be not supplemented by vigorous executive action in this direction, it will join the long list of Acts and Regulations of high-sounding promise and little performance of which raiyat and zamíndár have been the subject."

The Hon'ble Mr. Thomas said:—"My Lord, I had wished to speak generally in support of the Bill, from experience of like tenures in other parts of India; but, looking to the lateness of the hour and the number of speakers yet to follow, I think I shall best consult the convenience of this Council by forbearing to do so: but with reference to the quotation made by the Hon'ble Kristodás Pál with a view to show the pressure of land assessment in the Madras Presidency, from which I come, I may be allowed to say just the one word that his figures are not normal figures, and refer to the great famine time, and the uncollected arrears

are the arrears mostly of men and families who had died of famine, and have no sort of relevancy to the normal pressure of the assessment there."

The Hon'ble Mr. Reynolds said:—"I desire to thank Your Excellency's Government for the introduction of this Bill. I think it superfluous to enter upon any discussion as to the acknowledged and proved necessity for legislation upon the rent question, after a perusal of the papers which have been laid before us in connection with the Bill. It is conclusively shown by those papers that this necessity has been recognized by the Government, by the Courts of law, by the officers engaged in revenue and administrative duties, by the zamíndárs and other rent-receivers, and by the cultivators and other rent-payers. The Bill before the Council is the result of long deliberation and patient enquiry; it is an honest attempt to hold the balance impartially between interests which, though they are really identical, are apt to come into apparent conflict at various points of contact, and the authors of it have resisted the temptation to legislate upon new lines, or to put forward new theories of the rights of the different classes of the agricultural population. I cannot agree with the Hon'ble Mr. Kristodás Pál in the estimate which he has passed upon the Bill. I have studied the rent question in Bengal for nearly as many years as he has; I have studied it not merely in books, but by practical experience of its working, and I have striven to make myself acquainted with its real facts and bearings; and I say with confidence, that the feature which I most admire in the Bill is the eminently conservative and constitutional character of its main principles. In some points of detail I venture to think that this character has not been maintained, and I shall not shrink from noticing these points in their proper place. But, taking the Bill as a whole, it is essentially a measure framed in accordance with the ancient prescriptive law of the country, and, as such, it ought to be acceptable to those who think that the most useful, and certainly the safest, province of legislation is to formulate and crystalize those principles which have been tested by long experience and accepted by general consent I think it is useless to speculate upon the question whether, in ancient times, the right of property in the soil was vested in the Sovereign, in the zamíndárs, or in the raiyat. That question has been discussed with more learning than I could bring to bear upon it by my hon'ble friend Mr. Evans, and I imagine he would agree with me in thinking that the expression 'right of property', when used in such a connection and employed in its modern and European sense, is altogether misleading, and connotes an idea entirely foreign to the age and the country. But there are two great principles which underlie the question of agricultural tenancy in these Provinces,— principles which took their rise in a remote antiquity, which, though they may not have been formally embodied in any statute, are written in the hearts of the people, which were not affected by the legislation either of 1793 or of 1859, and which have survived the lapse of years and the rise and fall of dynasties. These two principles are, first, that the resident raiyat cannot be ejected from his holding in the village lands so long as he pays the established rent, and, second, that it is the right and the duty of the ruling power to determine the rent payable by the raiyat to the zamíndár. I observe with much satisfaction that not only are these principles recognized in the present Bill, but that the Bill is based upon them, and that its provisions are such as naturally spring from the acceptance of them.

"Chapter II of the Bill is of comparatively little importance in Bengal Proper; but in Bihár it will be extremely valuable, if full use is made (as I trust will be the case) of the power to make a survey and register of *khámár* lands.

"In Chapter III, section 15 reproduces the present law regarding the presumption arising from twenty years' holding at an unchanged rent. This presumption was first introduced by the Act of 1859, and I have always thought that it bore somewhat hardly on the landlord, and especially on two classes of landlords who seem entitled to favourable consideration,— landlords who have dealt leniently with their tenants in past years, and landlords who have purchased their estates at sales for arrears of revenue. I was at one time disposed to recommend that the presumption should be removed altogether; but I have since seen reason to modify this view, and I am now content that the section should stand, as it will always be in the power of the landlord to apply, under chapter XII of the Bill, for the preparation of a record-of-rights on his estate. It has, I think wisely, been determined to limit the sections regarding registration to tenures. There is no doubt something attractive in the proposal of the Rent Commission (which was retained in the Bill prepared by the Government of Bengal) to extend the same procedure to occupancy holdings. But the country is not ripe for this. There is no agency for carrying the measure into effect, and the law would be either a dead letter, or would be worked to the prejudice of ignorant and helpless cultivators.

"The short chapter on patní tenures contains nothing which seems to call for remark. The sale procedure, as specified in the schedule, will doubtless come under the consideration of the Select Committee. The law on this matter needs amendment on various minor points, and the Bengal Government Bill contains a number of useful suggestions and recommendations.

"Chapter V, which is really the keystone of the Bill, deals with the important subject of the occupancy-right of the tenant, and of the landlord's right of pre-emption. It avoids the fatal mistake committed in Act X of 1859 (or at least in the interpretation of that Act which has generally been accepted), of limiting the right to those particular fields which may have been held in continuous possession. It defines the settled raiyat as the tenant who has held raiyattí land for twelve years in any village or estate; and it declares that such settled raiyat shall have a right of occupancy in any raiyattí land held by him in that village or estate. It may be objected that the proposed definition is at once too wide and too narrow: too wide, because the cultivation of land in the same *estate* was never held to confer the position of a khúdkásht raiyat: and too narrow, because a much shorter term than twelve years might reasonably be taken as evidence of settled occupation. The definition may in some measure be looked

upon as a compromise : and the correspondence shows that it is not the definition originally proposed by the Government of India. But what we have to consider is the practical effect which this or any other definition will produce. Assuming the proposition (which indeed cannot be controverted) that the resident raiyat has a right of occupancy in the village lands, what is the definition which will secure this right to the greatest number of those who ought to possess it, and extend it to the smallest number of those who are not entitled to enjoy it ? I must own that I am not at present prepared to suggest a better definition than that provided by the Bill, and those who object to it may fairly be asked what they would propose to substitute for it. This, however, will certainly be one of the points upon which the Bill will be attacked : and it will be the duty of the Select Committee to see that the definition is not narrowed down by any limitations which would deprive it of its due significance or its proper effect.

" There is, however, one section in this chapter against which I feel bound to record an emphatic protest. Section 48 provides that the occupancy-right may be acquired by grant from a proprietor or permanent tenure-holder. I think I can understand the reasoning which may have led the framers of the Bill to insert this provision, but the section is, nevertheless, of a revolutionary and dangerous character, and any extension of the occupancy-right which may result from it would be too dearly purchased. It is practically an admission of the vicious principle that the occupancy-right may be made a matter of bargain or contract between landlord and tenant. The occupancy-right cannot be granted by the landlord, for it is not his to grant : it is essentially inherent in the status of the resident cultivator.

" Of the incidents of the occupancy-right, the only one which calls for notice is that which makes the right transferable. It seems probable that the right was not originally transferable ; but the custom of transfer has become common, and it is for the advantage of both parties that the right of transfer should be formally legalized. The landlord's interests are sufficiently protected by the power of pre-emption which the Bill gives him. It has been said that the result of a general power of transfer will be, that the land will pass out of the hands of the cultivators into the possession of middlemen and mahájans. But experience does not justify this apprehension. The transfers which already occur every year may be counted by thousands ; but the purchasers of the holdings are men of the same class as the sellers. There are at least two classes of occupancy-raiyats who possess and have long possessed an acknowledged and recognized right of transfer : the guzashtádárs of Shahábád and the thání raiyats of Khurda in Puri. It is certain that with neither of these classes has the power of transfer had the effect of making the lands pass out of the hands of *boná fide* agriculturists.

" The sections regarding the right of pre-emption must be taken in connection with those relating to merger, and the Bill seems to me somewhat defective in that it fails to explain clearly the nature of the landlord's title in a holding which he may have purchased. The draft Bill of the Bengal Government contained an express provision that the doctrine of merger should not operate to convert a holding, when purchased by the landlord, into *khámár* land. The present Bill provides that, if the landlord lets the land, he must let it as an occupancy holding ; but the Statement of Objects and Reasons explains that, if he pleases, he may keep the land in his own hands, and cultivate it by his servants or labourers. This is a serious departure from the rule of the old Regulation VIII of 1793, the zamíndár was not only permitted, but required, to let the lands of his estate ; he had no power to hold them himself. If, indeed, a zamíndár may hold raiyattí land in this way as long as he pleases, it is practically equivalent to the conversion of the land into *khámár*. Section 56 of the Bill will undoubtedly be evaded : and the whole question of the exact nature of the landlord's rights in a purchased holding ought to be carefully considered by the Select Committee.

" By chapter VI, the maximum rent of an occupancy-raiyat is not to exceed one-fifth of the value of the gross produce in staple crops. It ought to be clearly understood that this is a limit and not a standard : for, in the Eastern districts any such standard as one-fifth would involve an enormous enhancement. I am also inclined to think that the period of ten years provided by section 78 is too short. The Famine Commission suggested thirty years. This is possibly too long ; but, if it takes twelve years for a raiyat to become settled, twelve years is surely not too long for him to remain free from claims for enhancement, and the Select Committee might consider this point. The provisions regarding a Table of Rates appear reasonable and fair ; but I doubt whether any extensive use will be made of them. Careful enquiries on this subject have lately been made by the Government of Bengal in a number of selected areas, and the general results tend to the conclusion that Tables of Rates based upon classifications of soil cannot ordinarily be prepared in the Lower Provinces. I anticipate that the provisions of chapter XI will be found more generally useful than those which relate to the preparation of a Table of Rates.

" I should be glad to see the provisions of section 79 extended so as to correspond with those of section 74. If a raiyat is paying more than the established rate this ought to be a legitimate ground for an application for reduction. I have noticed the references to this point in the correspondence, and I am aware that the omission is not an oversight ; but I think the matter calls for further consideration.

" In section 81 it is to be noticed that, though at present the landlord's share is in some cases nine-sixteenths of the *grain*, the whole of the straw and chaff belong by custom to the tenant. To give the landlord half the gross produce would, therefore, be giving him a larger share than he is entitled to.

" The prices spoken of in section 83 are market prices ; but it is to be observed that section 75 refers to the price at which the raiyat sells his crops, and this is a very different thing from the market price. I presume the tables mentioned in section 83 are intended to

assist the Courts in determining cases in which the limit referred to in section 75 comes into play; but if this is the intention, it would be well to insert words to keep in mind the fact the price at which the raiyat sells his crop will ordinarily be fully twenty per cent. below the quoted market price of that crop in the bázár.

"The above remarks refer mostly to matters of detail; but my objections to chapter VIII are of a different character. I must own that this is the part of the Bill which I least like or approve. Short as it is, it probably contains more innovations than the rest of the Bill put together. I object strongly to the title of the chapter. The ordinary raiyat in Bengal is the occupancy-raiyat; and it is a dangerous novelty to countenance language which implies that the status of the non-occupancy-raiyat is the rule, and that occupancy-raiyats form an exceptional and privileged class. The clause relating to compensation for improvements is an innovation, but a comparatively harmless one, as a non-occupancy-raiyat would never make improvements, unless he were protected by a lease. But the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me to be objectionable. Either the landlord has the right to eject the tenant or he has not. If he has the right, he should not be required to pay compensation for exercising it; if he has not right, no money payment ought to be sufficient to give it him. Section 91 refers to the limit fixed by section 119, which provides that the rent of an ordinary raiyat or under-raiyat shall not exceed five-sixteenths of the value of the gross produce of the land. "I question the wisdom of attempting to fix by law the limit of an under-raiyat's rent. Such a law is certain to be disregarded, for it is not the interest of either party that it should be observed. But the provision which puts the non-occupancy-raiyat on the same level as the under-raiyat, and on a different level from the occupancy-raiyat, as regards the rent which he may be called upon to pay, is open to far more serious objection. It is an unconstitutional proposal; for it implies that the occupancy-raiyat is entitled to hold at a privileged rate of rent, and this is not, and never has been, the law of Bengal.

"I am fully alive to the difficulties which surround both these questions,—the question of the under-raiyat, and the question of the non-occupancy tenant. I am aware that the state of things has entirely changed since the days when the paikásht raiyat could practically dictate his own terms; and I do not object to a reasonable modification of the law to suit the altered condition of affairs. But I disapprove of any infringement of the sound principle that no raiyat, whether he has the occupancy right or not, can be required to pay more than the established rate of rent; and I therefore think that, in areas in which a Table of Rates is in force it should be applicable to both classes of raiyats alike.

"In chapter IX, the provisions of section 98 regarding the instalments of a raiyat's rent seem to me to be sound in principle, but to require some verbal modification. As the Hon'ble Mr. Kristodás Pál told us in his speech, monthly instalments of rent are in accordance with the custom of the country, and should not be interfered with; but interest should not be chargeable, nor should a suit lie for arrears, unless default continues for at least three months. This is the practice of the Government in regard to its own revenue. In all the dowls of the Permanent Settlement which I have seen, the revenue is made payable in monthly kists; but no measure for enforcing payment can be taken except at the quarterly days of payment. The provisions of this chapter regarding receipts and deposits of rent seem to me to be excellent. I am inclined to doubt the expediency of retaining section 114; and I should prefer to make the division absolutely final. Indeed, the provisions of sections 114 and 115 seem to me to be inconsistent with each other. Section 118 does not go nearly far enough. It is not sufficient to say that the danabandí papers shall be filed in the Collector's office. It should be declared that these papers are to be produced on the trial of any suit for arrears of the rent of the land, and that the suit shall be decided only in accordance with the entries in the papers.

"In chapter X, the wording of section 133 requires modification. There seems to be a confusion between revenue-free land and rent-free land. I know of no reason why a landlord should not measure revenue-free land if he is in receipt of the rents. On the other hand, he ought to be allowed to measure rent-free land if it is within the limits of his revenue-paying estate. The sections regarding the appointment of a manager on behalf of joint-owners have my full approval, except that I would suggest the omission of the word 'jointly,' in section 148. I see no harm in allowing the management to be restored to the owners in all cases in which it is shown that the estate will be managed by them without inconvenience to the public or injury to private right.

"Chapters XI and XII appear to me to contain excellent provisons for settling disputes and avoiding litigation. I trust and expect that these provisions will be extensively made use of.

"The chapter on distraint is of no great practical importance in Bengal Proper, where distraint is comparatively seldom resorted to. But in Bihár it will be of great value and use; and I attach special importance to sections 185 and 186. I have heard to-day with a good deal of surprise that illegal distraint does not exist now-a-days in Bihár. The fact is flagrant and notorious. The abuses and oppressions which have been and are still committed in Bihár under colour of the law of distraint require to be put down with a strong hand; and nothing short of an express declaration that they are offences punishable by the criminal law will be sufficient to suppress them.

"In the remaining chapters of the Bill I find nothing which appears to me to call for special remark. In what I have said, I have commented with some freedom on what seem to

be errors or omissions in the Bill. But I must repeat that, upon the whole, I look upon this as an excellent measure, broad and liberal in its scope, constitutional in its principles, impartially fair to the different classes whom it affects, and calculated to apply a practical remedy to the evils of which landlords and tenants alike have lately complained. If there are any members of the landlord class who consider that the Bill unduly interferes with their incomes or curtails their privileges, I believe they might safely be challenged to point to any essential part of the Bill (I do not speak of every point of detail) which touches any receipts to which they are justly entitled, or any privileges which they have not usurped. I repeat that this Bill is (in all its main features) a constitutional Bill, its object is to establish on a settled foundation, and to express in unmistakeable language, principles which have always been part of the unwritten agricultural law. It is the special duty of the Government to undertake this legislation, not merely in the general interests of the country, not merely for the sake of public peace and public prosperity, but because the system by which the old law of tenancy has of late been overriden and partially obliterated, has been, in some measure, the unforeseen and unintentional effect of our own legislation in the past. There can be no more striking instance of this than the example afforded by Act X of 1859. That Act was intended to be the agricultural charter of the raiyat. It has been twisted and perverted into a means of overthrowing the very rights which it was its object to establish, and this has largely been done by decisions of our own Courts of law. A day may come when the present Bill will be unsuited to the altered circumstances of the country. The Government will have the same power then, as it possesses now, of legislating for the protection and welfare of the dependant taluqdárs, raiyats and other cultivators of the soil, and this power it will not hesitate to use when the occasion shall arise. But for the present, and under the conditions which prevail to-day, the Bill before the Council appears to me substantially to provide a remedy for acknowledged evils, a redress of agrarian abuses, and a recognition of prescriptive rights, and I shall heartily and thankfully give my vote for referring it to a Select Committee."

The Hon'ble DURGA CHARAN LAHA said :—" I will make a few remarks, confining myself to some of the principal changes contemplated by this Bill.

" The object of chapter II seems to be to restrain the practice said to be prevailing in Bihár of converting raiyatti lands into khámár or zírat lands. I must say that, if it exists, it is only confined to that Province. In Lower Bengal, I am prepared to say, there is no desire on the part of landholders to increase the area of khámár lands. On the contrary, the landlords here retain with reluctance raiyatti lands in khás possession, simply because they cannot find tenants for them.

" The provisions in chapter V relating to occupancy rights are entirely new, and I must say that these changes are most objectionable. The existing law or custom does not support them, nor are they based upon the enactments which were superseded by the Act of 1859.

" Under existing law, a tenant with a right of occupancy has the right of holding his tenure so long as he continues to pay his rent, which, however, is liable to enhancement or reduction to fair and equitable limits under certain conditions. On failure of payment of such rent, he is liable to eviction under a decree of Court. He does not appear to have ever enjoyed a status higher than this. But it is now proposed to confer on him the status of a permanent tenure-holder, without fixity of rent, at the cost of the rights of the zamíndár. The right of pre-emption reserved for the latter will not serve the purpose of restraining transfers to objectionable tenants, because, in point of fact, it will involve an unnecessary outlay, for which he can never expect anything like an adequate return. Again, a settled raiyat as described in this chapter, may have a right of occupancy in any land in the village without any reference to the period of his occupation, and in spite of any contract under which he held it.

" These and other provisions in this chapter introduce a radical change in the established law, and are calculated to create an unnecessary conflict in the relations existing between landlord and tenant.

" In chapter VIII, which deals with the ordinary raiyat, the Bill confers on him a status which is entirely novel. The result of the extension of his right—one which is not unforeseen by the framers of the Bill—will be the multiplication of subordinate tenures, which would have the effect of defeating the very object for which the provisions have been made. But it is stated that the Government will put down the evil by future legislation. To my mind it seems to be more judicious not to allow the mischief to arise, than to create complications, and then to find means to check them.

" Then as to the question of enhancement of rent. The Bill lays down that it is to be effected either under a Table of Rates, or where there is no such guide, at the discretion of the Court at fair and equitable rates within certain limits, or by contract to be approved by a revenue-officer. As to the first course, I submit it will be impracticable, and, even if practicable, it will never be a safe and satisfactory guide. As to enhancement at the discretion of the Court, the matter remains exactly where it now is, with the addition of a restriction to the exercise of such discretion. And as to the last of these means, the validity of a contract being made conditional on the approval of a Government officer, a private settlement between landlord and tenant becomes at once a matter of considerable difficulty.

" In section 93 of the Bill the provision for compensation for disturbance is quite foreign to this country, and its propriety is questionable.

" The effect of this innovation will practically be to preclude the landlord from all possibility of obtaining from the tenant a fair share of increment in the value of produce.

" The subject is so vast and complicated that I cannot hope to do full justice to it. I

have barely touched upon a few of the salient points embraced in the Bill, in order to show that the Bill, as it has been framed, is repugnant to the spirit and letter of the Permanent Regulations, which had guaranteed the rights of both zamíndárs and raiyats, and to actual facts. It gives no practical facility for the recovery of rent, nor satisfactory means for enhancement, where enhancement may be fair, reasonable and perfectly justifiable. On the other hand, it enacts provisions intended, no doubt, for the benefit of the raiyat, but which, in course of time, will be found to operate prejudicially to the interest of the actual cultivators of the soil.

"In conclusion, I am inclined to think that this Bill will, in practice, do more harm than good, by destroying good feeling between the zamíndárs and the raiyat, and putting them perpetually at logger-heads. When such is manifestly the tendency of the Bill, a departure from the existing law in a way that will unsettle the relations between landlord and tenant cannot but be regarded as an experiment of questionable character and doubtful efficacy."

The Hon'ble Mr. Hunter said :—"My lord, at the present stage of the Bill, I intended to say only a few words, and from a special point of view. The hour is now so late that I shall probably consult the wishes of the Council, if I curtail even those few words within the narrowest compass. I agree with the general objects of the Bill; but there are three points which I hope the Select Committee will carefully consider. These are, first, that attempts to interfere by statute, as opposed to custom, between tenants-at-will and the laws of supply and demand have seldom been successful. Second, that, although we may declare that rents shall not exceed five-sixteenths of the produce, the laws of supply and demand will, in the case of the tenants-at-will, be too strong for a hard-and-fast line of this sort. Third, that the compensation for disturbances, amounting to ten times the enhancement of the rent, is excessive, and, as such, is unjust. I had intended to insist on these points at some length, but my hon'ble friend Mr. Reynolds has already dealt with certain of them; the debate has been unusually prolonged; and the hour is very late. With regard to the general principle, I shall at present only say that the legal difficulties and supposed guarantees which seemed to some thinkers to stand in the way of this measure have been effectually disposed of by the speech of the hon'ble and learned member who introduced the Bill. The instructions of the Court of Directors before the Permanent Settlement, and the express words of that Settlement, prove to my mind that the Government of that day neither intended to make a contract with the landholders which should prevent it from afterwards securing the rights of the tenants, nor made any such contract. Even if such a contract had been made, the hon'ble and learned member has shown that it could not interfere with the rights of the tenants who were no party to it. But after these and all other legal difficulties have been cleared away, the Bill has still to be discussed and judged of on other and quite different grounds. For this Bill is in reality an attempt to counteract by legislative devices a fundamental economic change which has taken place in the relation of landlord and tenant in Bengal. It is by economic tests that the measure must now be tried, for by its economic results it will hereafter be justified or condemned. This law endeavours to reinstate the cultivators in a security of tenure somewhat similar to that which they enjoyed at the time of the Permanent Settlement. The Permanent Settlement found two classes of cultivators in possession of the soil, one of which was protected in its possession by customary rights, the other by economic laws. The first class was the *khudkhást* or resident cultivators. The Permanent Settlement reserved the rights of this class, but omitted to define them. After two-thirds of a century had passed, Act X of 1859 endeavoured to discharge the duty thus left unfulfilled, and the present Bill completes the task which Act X began. The other class of cultivators at the time of the Permanent Settlement were the *paikhást* non-resident or migratory tenants, who held land in a village other than that in which they lived. These men, although possessing few rights, were at that time protected by economic laws more powerful than any legal system. There was then more land in Bengal awaiting cultivation than there were people to cultivate it. The demand was by the landlord for cultivators, not by the cultivators for land: and the cultivators had necessarily, under such circumstances, the best of the bargain. The charge of enticing away tenants by offers of land at low rent was frequently brought by one landholder against another, and had to be decided by the English head of the District. The increase of population during the past century has reversed this state of things. The population in many parts of Bengal has outgrown the soil. It is no longer the landlord who stands in need of tenants, but the tenants who are competing against each other for land. The same economic laws of supply and demand which protected the tenant at the time of the Permanent Settlement, place him, in many Districts, at the mercy of the landlord to-day.

"The present law endeavours to redress this state of things. To the *khudkhást* or resident tenants, who were protected by usage at the time of the Permanent Settlement, it gives the protection of a Code of clearly defined liabilities and rights. For the *paikhást* or tenants-at-will, who were protected by the economic law of supply and demand at the time of the Permanent Settlement, it creates certain legal safeguards which it hopes will save them from the extreme pressure of competition. In doing so it attempts to set up a breakwater between the operation of supply and demand and a portion of the cultivating classes. No one can read the elaborate evidence which has been submitted to the Council with regard to the state of the agricultural population in Bengal, without feeling that the Government is called to make this attempt. But no one can study the history of similar efforts to interfere, not by customary usage, but by statute, between economic laws and their economic results, without seriously asking himself whether such an attempt is likely to be successful. My hon'ble friend Mr. Kristodás Pál has shown how much can be said against such an attempt. Legal

restrictions which curtail the landlord's power over his estate tend to render him averse to investing capital in the improvement of his land. Nor must it be forgotten that, in Lower Bengal itself, the circumstances of districts differ so widely as to make any single rule inapplicable to all. In Bíhár and other overcrowded tracts, the tenant is at the mercy of the landlord. In Chittagong and some other districts, there is still a surplus of lands for the cultivators to pick and choose among at their pleasure. The Commissioner of Chittagong, in a recent report, describes the practice there in vogue as a system which 'checks all disposition to rack-rent, and enables the cultivator to take up as much or as little land as suits him.' I trust that the economic difficulties of the measure will be clearly realized, and that the Select Committee will give a fair and patient consideration to the arguments of the landholding classes whose rights will be curtailed by the Bill."

The Hon'ble RÁJÁ SIVA PRASAD said:—"My Lord, I know I am not a good speaker or a scholar. I have not read that logic which enabled Archbishop Whately to prove that Napoleon Bonapart was not born; or enabled Doctor Ballantyne to prove that the moon moved on its axis against all the mathematics of Dr. Kaye. I crave your Excellency's indulgence if my ideas are crude or my arguments confused. Nay, I may be here and there, perhaps, strictly speaking, out of order, but as I have been an observer of facts my whole life, I base what I am going to say on my personal experience. I have yet only glanced over the Bill; but taking the lucid introductory speech of the hon'ble Law Member as an index or key of the voluminous records connected with the subject, and of the conclusions arrived at by the highest authorities, I had better dwell upon the speech first, and then the Bill.

"The speech commences with the refutation of some imputations. I have not heard of any 'imputation' of the Government being 'actuated by a spirit of mischievous and restless activity', or 'being influenced by political or party consideration'; but I have heard of another kind of imputation, that the Government, being sorry to find their demand limited for ever by the Permanent Settlement, is now going to limit the demand of zamíndárs also, solely out of revenge. I know there is not a particle of truth in it. I can swear to the purest motives and the highest principles of the Government, but I must own that any condemnation of voluntary rack-rent in one Province comes with very bad grace from those who are forcing an over rack-rent in another. Those who are acquainted with the system of the Government revision of settlements in the unpermanently-settled Provinces do not stand in need of any elucidation; but for others I may be allowed to give one or two examples. I have a village, Gangrain, in the Gorakhpur district. The Settlement-officer fixed the rate of rent according to his whims and fancies, or according to some averages supplied to him by the Board of Revenue, and fixed the Government demand on the total of that rent. The Settlement-officer went away, and the Government sanctioned the settlement. But my tenants refused to pay me at that rate, left the land, and ran away with heavy arrears. For several years nearly half the village, some five or six hundred acres, remained uncultivated. At last I reduced the rate and the fellows have come back and are cultivating, though I pay to the Government the same amount which was fixed,—very punctually. I have heard, though I will not vouch for its exact authenticity, that a zamíndár in the Allahabad district, finding the rate fixed by Sir Auckland Colvin, when he was Settlement-officer there, unrealizable, and being thus unable to pay the Government demand, made a bequest of that village in favour of Sir Auckland and left it. The case came to the notice of the authorities when steps were taken for the recovery of the Government revenue, and then, perhaps, the rates were modified. I suppose it was Dr. Irvine who reported through Mr. Court, the then Collector, to the Government, that in the three trans-Jamna parganas of the Allahabad district he seldom met three men of whom one was not lame, on account of eating *khisari*, a very inferior pulse, better food than which the tenant could not afford to have on account of the high rate of rent. The Government modified the settlement and lowered its demand. I do not think the Doctors find that disease here in Bengal or Bihár. Numerous instances can be quoted like the above, but I wish to not be misunderstood; it is far from my intentions to oppose any measure which aims at limiting the rack-rent by making the produce or the value thereof as an ultimate standard. What I intend to show is simply this—that it would behove the Government better if the Government were to apply the principle first in the Provinces where Government is an interested party and shares in the rise or fall of the rent: for instance, let the Government rule in the unpermanently-settled Provinces that no Court is to give a decree for any arrears of rent which the tenant proves to exceed, say, half the estimated value of the estimated average produce for a certain number of years; and at the same time declare that the Government demand is never to exceed so much per cent. of the actual assets of the zamíndárs. Then, and only then, would the Government be justified in coming forward in the permanently-settled Provinces and telling the zamíndárs, 'Friends, you also cannot go beyond that.'

"Going to extremes is often to be deprecated. To say that zamíndárs had no existence at all, and are the British Government's creation, is simply to expose one's own ignorance of the country and its history. Still the copper-plates are dug up, granting villages in perpetuity, with their boundaries and all within them —*jalkar, bankar, dih, dabar, &c.*—the inscriptions generally ending with the threat that, if any one resumes the land, he will live sixty thousand years a worm in hell. Now, if these grantees had no proprietary right in the soil, what right had they? If they were not zamíndárs, what were they? Could they be farmers or officials? Farishta writes:—'Ala-ud-din-Khilji resumed all religious endowments and rent-free tenures, and confiscated all the property in soil (*har dehe ki dar vakf ya dar inam ya dar milk i kase bud hama ra khalisa kard*)'. *Milk* means property and *malik* proprietor. Farishta goes on further to say that the 'Emperor took half the produce of the soil from everybody whether he

was a Mukaddam or Chaudhari. The Chaudharis and Mukaddams, who once rode state horses, wore princely arms, dressed sumptuously and pursued the games like the Nobles, had at last been reduced to such extremities under this Emperor's rule, that their women were obliged to go out and work for their bread.' Chaudhari and Mukaddam of that time seem to be synonymous words for zamíndárs. Firoz Shah Tughlak writes in his memoir of 'the portion muleted at the delivery of the *landlord's* shares by the cultivator, and its attestations by some official.' Firoz Shah took only a tithe of the produce of land. I well remember to have read somewhere that when Humayan marched down from Agra, his baggage was plundered by the zamíndárs in the Gangetic Doab. The Hon'ble East India Company itself had at one time purchased the zamíndárí of the Twenty-four-Parganas from the Emperor of Delhi. Are the zamíndárs like the Mahárájás of Burdwan, Dumráon, Darbhangá and Bettiah, or Rájás of Majhauli, Manda, Bejoypur, and thousand others of the British creation? They have still many sanads and farmáns of the Muhammadan Emperors in their possession. Many will quote books that those Emperors had all along been acknowledged as the lords of land; but they forget that in the same sentence they are acknowledged as the lords of the persons and possessions of their subjects. So with this theory the Government will have the same right to interfere with one's lands as with his person or other personal property.

"Let us see how this movement began, and how it ends. The hon'ble the Law Member says:—'What, then, are the facts with which we have to do, and what are the evils for which legislation is required?' Let us see what are 'the facts'. Sir Ashley Eden says:—'In Bihár what is most wanted is some ready means of enabling the raiyat to resist illegal distraint, illegal enhancement and illegal cesses, and to prove and maintain his occupancy-right.' Sir Richard Temple intended 'to introduce a Bill to define the principles on which the rights of occupancy raiyats and tenure-holders should be forced, to simplify the procedure for realizing the arrears of rent in undisputed cases and to make the interest of an occupancy raiyat liable to sale for default in paying rent, and transferable by private agreement'. In the Bengal Council it was 'recognised that the legislature would have to alter the law with reference to ejectment, distraint, instalment and deposit of rent, and possibly sub-letting.' The Commission propose 'to create a new class of subordinate occupancy-raiyats by providing that a tenant who had held for three years and less than twelve years should be protected from ejectment at the will of his landlord.' Also that 'limits were to be set to the rack-rent' and to what an occupancy-raiyat 'might demand from an under-tenant.' Sir Ashley Eden writes in his letter of the 15th July, 1880, that 'he would like to see the Bengal raiyats, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times.' He wrote to the British Indian Association in December, 1880, that 'protection against arbitrary evictions must certainly be given to every settled cultivator who pays the established rent,' and that 'a substantial tenantry, free from debt, and in a position to stay and bear the pressure of occasional bad seasons is what Bengal requires. The Lieutenant-Governor desires, therefore, to see the occupancy tenure made the rule and not the exception; but at the same time he would have it kept as far as possible in the hands of *bonâ fide* cultivators, and sub-letting by occupancy tenants should be discouraged, if it cannot be altogether prevented.' The most important conclusions at which Sir Ashley Eden arrived, as given by Mr. Justice Cunningham in his Minute, are 'that the rents of Bengal were and must, in existing circumstances, continue to be customary,' not competitive'; and 'to guard against the conversion by the landlord of raiyatti land that is, land over which occupancy-rights exist, or can be acquired, into 'khámár.' 'Khámár' lands appear to have been originally merely the surplus unreclaimed lands of the village which the landlord was allowed, during the continuance of his revenue engagement with Government, to cultivate for his own benefit, but which became 'raiyatí' as cultivators settled on them.' The Famine Commission say that 'measures should be framed to secure the consolidation of occupancy-rights, the enlargemant of the numbers of those who hold under secure tenures, and widening the limits of that security, together with the protection of the tenant-at-will in his just rights and strengthening of his position by any measure that may seem wise and equitable.' The hon'ble the Law Member does not find, in any of the Regulations of 1793, words which can throw the whole of the then vast area of the unreclaimed land of Bengal into the category of khámár or private land; and so he has framed his definition so that the existing stock of khámár land cannot hereafter be increased. Now I ask him, in the name of justice, if the whole outcome of all these wishes, suggestions, reports and proposals is to culminate in depriving the zamíndárs of the right of increasing their khámár land by acknowledged legitimate means and by most ancient customs or usages, and conferring the right of occupancy even on 'squatters and nomads,' because the price of land and 'the disturbance money' are just the same to a zamíndár? There will be no ejectment, and any man would acquire occupancy-right if he has pluck enough once to plough and sow the land; but the zamíndár will never, even if he pays all the gold and silver of the world. Leave the custom and usage aside, no one had even thought hitherto of such an innovation. The Government tells the zamíndárs: 'Keep so much land and no more; this is enough for you; let the others take the rest; they are in greater need than you are.' I think, if the principle is fair and equitable, it would be better to plunder all the banks and distribute the money to the poor and the needy.

"The hon'ble the Law Member says that in Bengal the raiyats are strong and the zamíndárs weak, but in Bihár the zamíndárs are strong and the raiyats weak; whereas in Bengal the raiyats combine to resist the payment of rent, in Bihár the zamíndárs

destroy all the tenures and all the rights of the tenants and turn their land in zarat or khámár, or, in other words, Bihár is groaning under rack-renting and acts of lawless and high-handed oppression. My Lord, for seven years I have had to look after the affairs of Bettiah, which is one of the largest zamíndáris in Bihár, and I am in a position to assure your Excellency that I have not found a stronger set of raiyats, happier or better off, in any part of the country, from Kashmír and Rájputáná down to Puna and Haidarábád; and I am almost sure that a Briton by birth and stuff, Mr. T. M. Gibbon, C.I.E., will corroborate the truth of my assertion.. I have seldom seen a more generous-hearted zamíndár than the Mahárájá of Bettiah. Though he has received no decoration yet from the Government, neither the Star of India, nor the Lion and Sun of Persia to adorn his breast, but it is adorned with a heart which melts like wax for the poor. One day, nay it was about midnight, some ejected tenants came and cried out *duhai* at the gate; he begged of me to enquire about them. Mr. Gibbon told me that they were great *badmashes*, and were legally and deservedly ejected. But the Mahárájá insisted upon their immediate reinstatement, and told me that a Rájá's first duty is to protect his tenants, '*Rájá ka pahla Dharma prajapalana hai.*' The difference, in my humble opinion, between a Bengal and Bihár zamíndár is simply this—that the Bengal zamíndárs are now highly educated, and the poor Bihár zamíndárs, with very few exceptions, are still what they were. So the Persian saying. '*Yake nuksani mayah digre shimatáti humsayah*' (on one hand the loss of property, and on the other the abuse of neighbour) is fully applicable to them. His Highness the Mahárájá of Benares has a large property (I beg pardon—I am not sure whether a zamíndárí can be called any longer a property under the hon'ble and the learned Law Member's new definition) in Bihár, and so my many other friends of Benares have, and yet the same law is proposed for Bengal and Bihár. We have a saying, '*take ser bháji take ser kháji*' (two pounds of cake for two pice, so two pounds of salad too). Though the hon'ble the Law Member may say '*chu az kaume yake bedánishí kard na kihrá manzilat mánad na mih rá*' (if one man in a nation commit a crime, neither low nor high are to be spared; all are to be punished); if a villager killed a soldier, the whole village is to be executed, as the Russians, I hear, are doing now.

"Now I have purchased some thousands of acres of waste-land in fee-simple under Lord Canning's Resolution, and spent much money in bringing parts of it under cultivation. What will be the fate of that land, or, I may say, my own and my children's, under this Bill? The registered kabúliyats of my tenants, under the name of 'contracts', will be null and void. I will not be able to eject them, and for any enhancement I must be prepared to spend in litigation a sum the interest of which will far exceed the amount of such an enhancement. I wonder if it is known to the Government what was the cost, or how much money was cast away in the great rent case of 1865. I shall feel extremely obliged if the hon'ble the Law Member would be pleased to give a short definition of the treacherous English word 'fee-simple,' and a short construction of the sanad signed by a Secretary to the Government, as he has given of the words zamíndár and landlord, and of the proclamation of Lord Cornwallis. Lord Canning may be laughed at very shortly as Lord Cornwallis is now; but allow me, my Lord, to put here on record the motive with which that great statesman was actuated. During the Mutiny of 1857 he had seen how useful and valuable these Britons were to the State. Lord Canning had seen how a Venable had held the district of Azamgarh single-handed for the State, and driven out the mutineers from it; and how many others like him had done the same in other parts of the country. He wished to increase their number. He asked men like Mr. Glyn to take land and settle in the country. They refused, under the plea that, with such a system of settlement and the rent-law, they could not persuade themselves to acquire land in India and invest their capital in improvement. Lord Canning resolved then and there to open a way for the acquirement of land in fee-simple, though, as soon as he had breathed his last, the policy was changed. I am sorry I was not living at the time of Lord Cornwallis; but if the science of spiritualism has any truth in it, his spirit may be smiling on our incapacity to understand how he had found the body of Bengal and Bihár zamíndárs, and the very constitution of zamíndárí, far more useful to Government than ever Lord Canning found the whole body of Oudh taluqdárs or all the Venables of the world. He lost no time to make a settlement with them on such a permanent basis as to secure a permanent safe basis for the future operations of the Government, which has extended its dominion beyond Attock (Atak), falsifying the very name of the place, which means 'stop'. I shall find myself much mistaken, and shall have to revise my history of Hindústán, if the zamíndárs of Bengal and Bihár, as a body, are not as loyal subjects of their Kaisar-i-Hind as any crowned head in the world, from Noah up to this moment, can boast of. I have seen with my own eyes some zamíndárs of the Benares Province placing flower wreaths on the tomb of that great and good man, Lord Cornwallis, even now. I am fortunate at present to find my waste-land situated beyond the pale of the jurisdiction of this Bill, otherwise I would have had to deplore that the land was mine on the 2nd of March, but it passed over to others on the 3rd, without any fault of mine; however, the principle of the Bill seems to be contagious. It will be better for me to look after my property before it is too late. What course is left to me to follow? I am bewildered. The only course open before my eyes just now is simply to serve notices of ejectment on all my tenants before the end of this month, which is fixed by the law as the last month for the purpose in the year, and allow the whole land again to revert to its pristine condition of groaning under a thick forest haunted by the wild beasts; but allow me, my Lord, to declare most sincerely that it will be worse than death to me ever to think of your Excellency's illustrious and endeared name to be associated with any measure which may convert the land now smiling under luxuriant crops into a gloomy forest, while the policy of Lord

Cornwallis has turned, as acknowledged by the hon'ble the Law Member himself, the wastes and ancient forests of Bengal and Bihár into culturable land.

"The only nail which the hon'ble the Law Member has hit on the head is a frank acknowledgment of 'the misapplication of English analogies to Indian facts.' He says that the 'Bengal zamíndár is not a landlord, or landowner, in the English sense of the word.' I say that the money paid by an Indian tenant is not rent in the English sense of the word. For the meaning of 'rent,' Malthus is no authority for us Indians, though he may be for an English Chief Justice of the High Court, like Sir Barnes Peacock.

"The word rent is misapplied in India. It is a tax on produce in its true sense and meaning. Under the sacred laws of *Manu*, acknowledged to be the most ancient, 'the King (Rájá) took one-sixth of the fruits of soil (produce); but when it was of bad quality his share was limited to one-twelfth. On the cattle, gems, gold and silver he levied one-fiftieth, and on the produce of trees, flesh, meat, honey and the like accumulations of nature and of art, a sixth. Besides this all the artisans and labourers worked for him gratis one day in the month. He was entitled to five per cent. on all debts admitted by the defendants on trial, and ten per cent. on all denied and proved.' In this so complete a list of taxes, if one is a tax, then all the others also are taxes, and if one is rent, then all the others also are rent. The famous Káli Dás says in his *Raghuvans—Shashthánsam vali magrahit*, that is, the Rájá took the one-sixth of the produce as his tax. It is out of this tax, or the share of the State, that all the tenures, zamíndárí, mukarrarí khám, khálsa, raiyatwari, khont, mustájiri, jágír, muáfi, krishnárpan, &c., &c , have been created. Under the Slave Dynasty this tax was raised to one-fourth of the gross produce. Alá-ud-din Khiljí assessed it at one-half. Sher Sháh reverted to one-fourth, but Akbár took one-third. In many places it is still divided half and half between the proprietor and the cultivator, or the zamíndár and the tenant. In Benares it is called *adhaiyá*, which means half and half, and this proportion has been acknowledged as customary by Lord William Bentinck in his celebrated circular. The question is, whether there is a proprietary right (*Svatva* or *Hakki Milkiyat*) possible in land or not. In England, William I conquered the land and distributed it amongst his feudal chiefs. So when the Aryans came here from the North-West and vanquished the non-Aryans (Aborigines), their Sovereign apportioned the land amongst his followers, as is written in the Vedas: 'Indra the lord conquered and drove out the Dasyus and Rakshasas and gave their land to the white-faced followers.'

"The hon'ble the Law Member says, 'that the great mass of the Bengal raiyats were, at the time of the Permanent Settlement, in the enjoyment of certain customary rights which at least included the right of occupancy in the land conditionally on the payment of the rate of rent current and established in the locality, and, I may add, the right of having that rate of rent determined by the State.' May I be allowed simply to ask if it is not so now? Are there not fixed-rate and occupancy-tenants? Nay, are they not growing? Just the other day seven paikhásht (non-resident) tenants have acquired occupancy-right in my village, Bodarvar, by lapse of time, simply through a mistake of mine in the calculation of years. The tenants in Jaunpur district have now become mostly fixed-rate. The hon'ble the Law Member quotes the Court of Directors' instructions to the Indian Government 'not to depart from our inherent right as Sovereigns, of being the guardians and protectors of every class of persons living under our Government.' May I be allowed simply to ask if any zamíndár class of persons has ever asked or expected from the Government more than the mere protection of his rights and privileges, or of his property and life, and why the zamíndárs are denied the protection? The hon'ble member further quotes the declaration of the Governor General in Council: 'It being the duty of the ruling power to protect all classes of people.' That is our Magna Charta, and the zamíndárs can well claim that protection.

"The hon'ble the Law Member says that 'no one can acquire the status of settled raiyats, and the occupancy-right which is attached to it, unless he has been a landlord, or he and his ancestors before him have been landholders for at least twelve years in the same village or estate. Thus mere squatters and nomads are effectually excluded,' but I may be allowed respectfully to ask, will the zamíndár be allowed to eject the squatter or the nomad? Under what section? It may be said under the 'disturbance money section.' Well and good! There the zamíndár is to pay for his own land to an occupancy-tenant, who does not pay his rent and falls into arrear, in the shape of price: here a *badmásh* comes and clandestinely ploughs and sows a piece of land, upsetting all the plans of the zamíndár, and receives money from him in the shape of disturbance money, for restoring the zamíndár's land to the zamíndár. I have heard of the right of the sword, but this will form the right of the plough. Some fifty of my tenants left my village, Bodarvar, in Gorakhpur, with heavy arrears, after they had taken crops home. When I went to the village to arrange about the land they had left, I found all the land cultivated by other, say fifty, men—many of them being relatives and friends of those who had run away. I was willing to settle with them on the same terms as their predecessors enjoyed, but they refused to register their *miádi* kabúliyats. I, of course, ejected them through the proper channel, though the process cost me some thousand rupees; but, under this Bill, I would have been obliged to pay those ejected tenants a couple of thousand rupees more, in the shape of the disturbance money, or engaged *lathiwálás* to stop them by force from ploughing and sowing, and bribing the policemen, at the risk of my going to jail. But what else could be done? Land is dear, it is a second wife, and many Hindús have become Muhammadans for it. There is, perhaps, Rájá Salámát Sháh at Azamgarh of this description, and many more may be found.

"The hon'ble the Law Member has given, as a sample, some kabúliyat and pattá in his

speech; but, if there are Shylocks in India, there are also wise Judges, who know what is lawful and what is unlawful before they enforce any contract. I can show a hundred kabúliyáts and pattás which I have given to my tenants-at-will in Benares, with occupancy-right which they call istimrárí.

"The hon'ble the Law Member talks of the wants commonly known in England and Ireland as the three Fs,—fixity of tenure, fair rent, and free sale. Leaving the question of sale just now aside, and seeing that the tenants of twelve years have fixity of tenure and 'fair and equitable' rent, I simply remind him here that he has completely overlooked an Indian tenant's wants, which may be called the four Ss,—supply of water, supply of seeds, supply of bullocks and saving from the Court expenses. We have a saying:—*Gráma samípe labdhvá kúpam-grámínah kin gaunyati bhúpam* (a villager who has a well near his land does not care for a king). If one tenant is ruined by a marriage, I can point out one thousand ruined by Court expenses. Just the other day one of my tenants, Debi, refussd to pay me one-and-half anna acreage for half a bíghá rent-free land. I applied for recovery and obtained a decree against him for Rs. 3-11, as follows:—

| | Rs. | A. | P. |
|---|---|---|---|
| Amount sued (acreage for three years) | 0 | 2 | 3 |
| Arzidavi | 0 | 6 | 0 |
| Talbáná | 1 | 8 | 0 |
| Mukhtárnámá | 0 | 8 | 0 |
| Copy of decree | 0 | 8 | 0 |
| Petition for it | 0 | 1 | 0 |
| Petition for the execution of decree | 0 | 1 | 0 |
| Mukhtárnámá for it | 0 | 8 | 0 |
| Interest | 0 | 0 | 9 |
| TOTAL | 3 | 11 | 0 |

The land was put up for sale, but as the man came to his senses, and fell upon my feet, I allowed him to remain.

All the three supplies depend upon good rent law; no bank of any kind in the world can do that.

"The hon'ble the Law Member says, 'that the powers of transferring and sub-letting, which the Bill recognises, may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy-raiyats, but under-raiyats, with but little protection from the law, is indeed within the range of possibility; but if such a state of things would ever arise we may rest assured that the Government of the day will know how to deal with it.' I may be pardoned if I say that I cannot accept such an assurance. This is the first time I have ever heard of such a legacy. At any rate it is very curious, and indeed very bold. At the instance of the present Lieutenant-Governor, to impose some discouragement on sub-letting, the maximum rent for sub-tenants or under-raiyats not having a right of occupancy appears to be fixed at five-sixteenths, or about thirty per cent.; but what protection has been devised if the occupancy-tenant takes every year a heavy nazráná (premium), besides the legal rent, from his sub-tenant under the threat of ejectment? The pleaders cannot increase their legal fee or *mehantána*, but who can prevent them from taking a tenfold shukraána (*douceur*)? The real cultivators of the soil under the Bill will till the land at a rack-rent as sub-tenants, and a new class of under-proprietors of the baniyá class will spring up as occupancy-tenants at the expense of the poor zamíndárs. The hon'ble the Law Member disclaims any merit for the originality of his proposals; but, in my humble opinion, limiting khámár and giving occupancy-right to 'squatters and nomads' is certainly very original. He says: 'We have endeavoured to hold an even hand between the two parties, and to define and adjust their rights in such a way as may be most conducive to the common interests of both.' I beg pardon; I cannot see the truth of the statement, and I leave it to the judgment of those who do not belong to any party. I have a village, Khanavan, in Benares, three-fourths of which are under general law and one-fourth under a special law. Well, in the time of Lord William Bentinck special settlement was made of this one-fourth. The zamíndár and the tenants appointed arbitrators, and the arbitrators fixed the rate of rent for ever, without any right of enhancement on any account to the zamíndár, and gave the right of occupancy and transfer to the tenants. Now, what is the consequence? Four-fifths of the land have come into my possession by right of purchase, and only one-fifth remains in the hands of others, a baniyá class of people, who also have come in possession of that by right of purchase. The descendants of the original tenants are tilling the land as sub-tenants. I have given occupancy-right to all my tenants in the three-fourths of the village, but will not give in this one fourth.

"The hon'ble the Law Member ends his very long, exhaustive and most elaborate speech with a declaration that whatever has been 'endeavoured by the present Bill to do, is so to legislate for her as to preserve whatever is best in the spirit of her ancient institutions.' If the hon'ble the Law Member be good enough to acknowledge that the words 'for tenants' were simply, by an oversight or mistake, left out after the word 'best,' I shall not speak further, otherwise it will be like the Benavá Fakír, who learnt only the first half of a verse from the Koran, that is, 'Don't pray,' and ignored totally the other half, that is, 'when you are drunk.' I cannot say what may be the meaning of the word justice in the English sense, or the sense of the hon'ble the Law Member, but I can vouchsafe the meaning of the Arabi word *A'dl*, which means to mete out equally; or *insáf*, to make half and half. The hon'ble the Law Member acknowledges that formerly 'resident or chhaparband (owner of a hut) tenants were not ejected except for arrears of rent'; but he ignores totally the acknowledged right and power of the zamíndárs to allow or refuse residence. No man could come and live in the village without the permission of the zamíndár. In the Wájib-ul-'arz (agreement) it is specially mentioned that the zamíndár would not allow any thief or bad character to reside in

his village. Had the zamíndár not power of refusal, this paragraph would have been superfluous. Now, if a zamíndár gives permission to a man to build a hut, which is, as a rule, done after taking some *nazránda*, (present), and cultivate without any written contract, it will be preposterous to think that the man could be ejected at the zamíndár's will; but now the Bill allows every one to build a house anywhere he likes—in a field or a pasture—and even claim compensation for it, which will be of no earthly use to the zamíndár. The fact is, that there was no period in history in which, with the zamíndárí (including jágír, muáfi and mustájirí, &c.) system, the system of khám, khálisa or assámívár had no existence, and so there was no period in which, with the occupancy-tenants (including fixed rate, rent-free, &c.), the tenants-at-will had no existence. The mistake, in my humble opinion, is simply in the endeavour to make occupancy-right universal and tenants at-will an impossibility. Leaving possibility or impossibility aside just now, I beg simply to assure your Excellency that what the hon'ble the Law Member is pleased to call India's ancient institution has in no period of history, as far as my knowledge goes, and in no part of the country, as far as I have seen, ever been dreamed of even. Now to the Bill:—

"My Lord, I have had time merely to glance over it The sin lies in two ways: firstly, in commission, and secondly, in omission; but before going into the details of the Bill, which I would rather leave to some future period, I may be allowed to state that, if the object of the Bill is to improve land and agriculture, or ameliorate the condition of the agriculturists and promote the well-being of the cultivators of the soil, the Bill does not go very far; it totally fails, rather, in many instances it takes an opposite direction and makes the case worse.

"Allow me first to say a few words about the omissions. I am surprised to find that not a single provision has been made in the Bill to supply the crying wants of the tenants. They want wells, and how does the law stand now? If I dig a well at a cost of two hundred rupees, which can irrigate 24 bíghás belonging, say, to 24 tenants, I ask them to pay me the legal interest on the capital laid out, in the shape of an enhancement of a rupee per bíghá. They refuse to pay, simply because, if they accept an enhancement, they shall have every year to pay, but otherwise they hope sooner or later to have the water for nothing, by bribing the *patwárí* and my *karanda* with a couple of rupees. The only course open to me is to serve on them notices of enhancement and fight out 24 cases up to the Board of Revenue on appeal, which will not cost, at the lowest computation, less than a thousand rupees. Now, if the law be framed so that a zamíndár, before digging a well, may apply to the district officer for permission, supplying him with a plan and estimate and a list of the tenants, their land, rent and the amount of enhancement, which is not to exceed the legal interest on the capital laid out, or to fall more than a rupee per bíghá, the district officer, after giving due notice to the tenants and enquiring into their objections, if any, may give permission to dig; and when it is reported complete to his satisfaction he may order the patwárí to add the enhancement to the rent in the village-records. I am sanguine that thousands of wells will at once be dug where wanted. It is now commonly said that the zamíndárs have not done their duty, but no one has taken the least notice yet how the law operates now. For the supply of seeds and bullocks, if I advance any money, I shall have to go to the Civil Court, and after all the trouble and expense, if I am so fortunate as to obtain a decree, there will be no property against which it can be executed. I cannot understand, if the Government recovers its advances as arrears of revenue, why the zamíndárs are not allowed to recover their advances as arrears of rent, provided that the interest and instalment does not exceed the limit assigned by the Government and the transaction is duly registered. If it is allowed, the cultivators of the soil will at once be placed above the want of any bank or banker. It has become the fashion of the day to villify the bankers as takers of fifty per cent. interest. I may be allowed to explain how I take this fifty per cent. from my tenant. He wants, suppose, a maund of seed (wheat) in November, when it sells, say, at a quarter of a maund per rupee, so I give him a loan of my wheat, which is worth four rupees at the time, on a promise that he is to pay me back a maund and a half (fifty per cent. more) in kind. He returns me my wheat in May, when, generally speaking, it may be selling at half a maund per rupee, so I receive two rupees worth for what was worth four rupees at the time I lent. It may be asked then, why the zamíndár lends. He lends only because in the long run he has the satisfaction to find that his grain-pits contain ten thousand maunds when he had commenced the business with only one. Besides this, if he had not lent the seed, perhaps the land would have remained uncultivated, for a tenant cannot be expected to keep and preserve such a small quantity as a maund is for seed all the year round against fire, thief, mice, white-ants, the little urchins and hungry old hags of the family. To go to the town, often fifty miles distant from his house, to borrow money from some bank, even at five per cent. interest, to purchase seed from the bázár and bring it home on the head of a hired cooly will simply be ruinous. I do not see any provision has been made for saving the tenants, from the expenses of the Court; nay, I see even an application for distraint shall be liable to the same court-fee which would be payable in a suit instituted for the recovery of the arrear therein claimed (clause (2), section 167). However, the most curious feature of the Bill is, that the Local Government may suspend the provisions of sections 166 and 184; though it does not seem why. It seems inexplicable that, if the movement commenced to facilitate the recovery of rent, why it ends with the throwing of difficulties in distraint. Sir Ashley Eden's beau-ideal tenantry of Bengal can only be hoped for, under such a Bill, when the millennium comes under the prophecies.

"It is quite unnecessary to search out for antediluvian proofs, or prehistoric customs and

usages. I mean the procedure followed under the Native rulers before the Hon'ble the East Indian Company acquired the sanad of Díwání. The Government proclaimed its intention to protect and maintain the existing rights, privileges, customs, and usages, as found or acknowledged, and let it do so now. Any demur on the part of the Government to fulfil this promise, or at least expectation, will be fraught with mischief.

"The Bill aims, as I think I have said already, at making the occupancy-right universal (sections 45, 49, and 56) and ejectment, except for arrears in rare cases, practically impossible (section 149), by limiting the khámár and zarat land to its present extent and preventing its future growth (chapter II), and by making all private contracts against these drastic measures null and void. My lord, may I be allowed to ask if, in any period of the historic age, in any part of the country, under any kind of rule, such a limit was ever put to the acquirement of the khámár and zarat land? The zamíndár has a right to let out his land at any rent, whether one-half or one-quarter of the would-be so-called pargana rate to A or B. But if this A or B relinquishes the land, or runs away with arrears, or even for five rupees arrears the zamíndár pays ten rupees for the land which, at any rate, was once his own, at the sale for a decree, the land cannot be again his. Any man may come, cultivate it, build on it, and make it his own; but it cannot revert to the poor zamíndár, its rightful owner (section 56), because it is out of the khámár and zarati entered in the register now to be made. It was the tyrant Alá-ud-dín Khiljí only who, professedly to keep the people living from hand to mouth, had ordained that no one was to possess any land beyond a certain extent, and that no one was to possess more cattle than a fixed number; but in the 19th century, in the reign of our Most Gracious and beloved Kaisar-i-Hind, Victoria (God bless her), a Bill is brought before your Excellency's Council, the effect of which will be that, if I purchased a piece of waste-land under Lord Canning's Resolution and brought it under cultivation at a heavy expense, it was mine on the the second of this month, but will not be mine on the third. I should have to add a codicil to my will, and all my plans will be castles in the air. Sir Richard Garth, who is truly called Chief Justice, may well denounce such a policy in the strongest term—a 'spoliation.' But I may be allowed again to ask, if a zamíndár enters in the village-records all the land in the names of his relatives and confidential men, how the law can prevent him from reaping the advantages of khámár or zarati, though the law may promote litigation, fraud, and perjury to its fullest scope, which is the tendency, I am grieved to say, of this age of high education and new civilization? What will be the result of all this (I do not know really what to call, but let me call) drastic measure? A new set of petty sub-proprietors, as I have already said, generally of the baniyá class, will arise. The so-called tenants of to-day will all become pakka (strong) proprietors, only to transfer their land to baniyás, pocketing all the money which now may find its way to a certain extent to the purse of the natural and lawful proprietor, the zamíndár, and still of as little use to the State in the time of need as a straw. Your Excellency told the taluqdárs of Oudh, just the other day, 'that the primary and essential condition of agricultural prosperity is the well-being of the cultivators of the soil; the promotion of that well-being the Government has very earnestly at heart, and it attaches to it an importance of the highest kind.' Now, my Lord, most respectfully I beg to ask, does the Bill in any way ameliorate the condition and promote the 'well-being' of the cultivators of the soil who will always be, generally speaking, sub-tenants and form the mass of rural population? The Bill limits the rent demandable from an under-tenant or an under-raiyat (section 119). Will that do any good to the poor under-tenants? It is just like sending the paper horses, which the Lamas do according to Mr. Hacq, for the sick and the weary travellers. Now, suppose I am a tenant, and I have a sub under me for whose land, suppose, the Bill limits the rent to rupees two. I tell him, my friend, the law does not allow me to demand from you more than rupees two in the shape of rent, but unless you pay me rupees three more annually, as a nazráná, in advance, I will not allow you to cultivate my land. Go away to some other place. Now what will the poor sub-tenant do? He must pay whatever I ask for. The law may go further and give occupancy-right to the sub-tenants too, and make it criminal for the tenants to take more than what may be fixed by law. But how can the law prevent the tenant from colluding with the zamíndár and relinquishing the land or having it sold for arrears, solely to ruin his sub-tenants? The law may make the tenure of a sub-tenant as secure and profitable as that of a tenant, but then he also may have a sub-tenant, and so on, till the cultivator of the soil will have only enough to live on from hand to mouth, and to whom an occupancy-right or any right will be quite worthless. The cultivators of the soil in India, who form the mass of the population, are generally labouring classes, and Providence has ordained that they are to earn their bread by the sweat of their brow, to place them above want is, in my humble opinion, above any human power. I have heard of more poverty and misery in Europe, even in England, than in India. However, worse than this limitation of the khámár and zarati land is to make null and void any contract between a tenant and a zamíndár sections 45, 47 and 49). India has been famous for the honour of her contract. It will be a pity to teach her now that a man's contract is nothing, that even legal contracts are good for nothing. This very Council passed Act X in 1859, under which, having full faith and confidence in the Acts of the Government, suppose I let out ten bíghás of land to A—never mind for the consideration passing between me and A, whether to my loss or profit, or A's loss or profit, but it was agreed upon that after five years the land will again be at my disposal, and it will rest with me to re-let it or not. The agreement, pattá and kabúliyat have duly been registered and they were as legal and binding documents, at least in my humble opinion, as the Government promissory notes are, or a treaty between the British Government and any independent Chief of India, on the 2nd of this month, but on the 3rd, if the Bill passes, they are a mere piece

of waste-paper. I am quite bewildered what history will have to say of such transactions. I know of a Commissioner of a revenue division, who was writing a history of India, but when he came to the transaction between Clive and Amin Chand he tore up all what he had written saying that he could not perpetuate such a blot on the character of his countrymen. Reduce the twelve-years period for the growth of occupancy-right to twelve days, reduce the rent from rupees 12 to 12 annas—anything may be done, but for goodness sake do not repudiate legal contracts so publicly and without any tangible excuse. The Canal Bill, or whatever its true designation may be brought forward by the brother Stracheys, which proposed to levy a compulsory rate of water and revive a modified *begar* system, and which consequently was vetoed by the then Secretary of State till those two objectionable sections were removed, was nothing compared to this Bill, limiting the *khámár* and *zarati* land, and making null and void legal contracts. I do not find in the long and exhaustive speech of the Hon'ble the Law Member, any one or anybody, whether Sir Ashley Eden, Sir Richard Temple, Sir George Campbell, the Rent Commission or the Famine Commission, proposing this kind of drastic measure.

"I never doubt for a moment the power of your Excellency's Council or the legality of of its acts. The Council can repeal all the Regulations of 1793 if they like, and make even the Permanent Settlement itself a matter of history; but the question is simply this, whether it is wise and politic to enforce such measures, the need and necessity of which are not at least apparent to those who are mostly affected by them. Let us see what Sir James Stephen said on the 6th April, 1871, at Allahabad, on the occasion of passing the Local Rates Bill. He said :—

'We are not a representative Government. With every wish on the part of every member of the Government to use his powers for the benefit of those whose interests they affect, it is impossible not to feel at every turn how great are the differences between the governors and the governed, and how supremely important it is for all parties that, whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises. A really representative Government may deal with the pledges of their predecessors in a very different way from a Government like ours. If permanent, representing as it does the views and feelings of the population of the United Kingdom, it should see fit to re-open the question of the Scotch and English Church Establishments, it would be absurd to say that they were debarred from doing so by the Act of Queen Anne. They are themselves the representatives of the descendants of those by whom the Act of Union was passed, and they have the same moral right to undo what their predecessors did in a matter affecting the English nation for the time being, as a man has to reconsider resolutions which he has made at any particular period of his life as to his own subsequent conduct in matters in which he has entered into no contract with others. We, on the other hand, are in a position more nearly resembling that of a person who has made a contract to his release from which the consent of the other party is necessary.'

"It is true that there is no contract or compact here concerned as between two Powers like Russia and China; and I am not one who always brings forward the common phrase 'Permanent Settlement' as a great bugbear. I know very well that it settles only the Government demand, and no question of Government demand or revenue law is just now before us. I own that it is the great duty of the legislature to protect the just rights of the tenants and promote the welfare of the cultivators of the soil; but at the same time the duty is not a bit less to protect the just rights of the zamíndárs. We, zamíndárs, do not want the rights of an English landlord, whatever he may be—a lion or a bull—we are zamíndárs; and let us have a zamíndár's right. The Government proclaims by tomtom or at any rate, gives us to understand that every one's right is to be protected. Now, is the right which has been enjoyed by the zamíndárs, at least for the last ninety years, which has been acknowledged from time to time by the law and by all the Courts of British India, and on the faith of which acknowledgment millions and milions of money have changed hands, no right at all? One has a kabúliyat duly executed and registered under section 7, Act X of 1859, that never any occupancy-right is to accrue in the land; or, according to the established custom and usage, has entered some land relinquished by his tenants in his own name, as sír or khámár or zarat in the village-records, for which he pays revenue, and now and then lets it out wholly or partly to the villagers from year to year. Now this Bill in one breath makes the kabúliyat null and void, and the zamíndár's sír, khámár or zarati land becomes the property of a ploughman, only because it was not held by the zamíndár continuously for twelve years. Act X of 1859 can be repealed, but how on earth all the contracts entered into under it can be made null and void and all the decisions of the Court upset? When the Government makes legal, private contracts null and void, how it can be expected to respect long its public contracts?

This is, perhaps, the last time in my life that I shall have the honour of speaking anything in the Viceregal Council, and I am very sorry indeed that I have not been fated, like my hon'ble friend Mahárájá Sir Jotindra Mohan Tagore, to thank your Excellency for the fulfilment of a "pledge;" but the onerous duty which I have to discharge, though sad and painful, compels me to warn that, if such a Bill passes, it will shake the faith and confidence of the people, not only of British India, but of all the Foreign States in the Government to its foundation. I sincerely hope no one may have ever to say what the 'vakíl' of the then Mahárájá of Jaypur had said to General Ochterloney, when he handed over the Jaypur State to the tender mercies of Scindhia, that the conscience of the Government is subservient to the exigencies of the time. Englishmen have an adage that 'necessity has no law,' and so the Muhammadans, '*gar Zarurat buvad ravá báshad*'; but we Hindús have a different kind of belief. Our great and famous Rájá of Ujjain, Bhartrihari says: 'Let the people praise or abuse, let wealth come or go, let death approach this moment or remain far away, great men never depart from the path of justice.' (*nidantu níti nipuná yadi vá stuvantu,—Lakshmi samá visatu gachhatu vá yatheshtam adyaiva vá marana yugántare vá—nyáyat pathah pravichalanti*

*padam na dhíráh.*) I am not an alarmist. I never doubt the prowess of the British nation, or the proverbial loyalty and submission of the Indians. If to-day the Government orders a general confiscation, even of the moveable property, I am certain that the loyal zamíndárs of Bengal and Bihár will bring all they possess, except what they may conceal underground, on their heads and shoulders to the treasury. But I may be allowed, my Lord, to repeat here the words of the erudite Sir James Stephen that 'whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises.' In conclusion I may be allowed, my Lord, to hope that I may not be misconstrued It is only a sense of duty, and a deep sense of duty, which has compelled me to occupy so much of the time of the Council."

The Hon'ble Mr. Hope said:—"As the Bill comes under the broad designation of a revenue Bill, and as I may, perhaps, to a certain extent claim to be considered a revenue expert, I should, under ordinary circumstances, think it my duty to enter into the question which it deals with at some length. But, considering that the Bill relates to only one Province of British India, and that Province is represented by so numerous and able a body of members in this Council, I do not feel myself called upon to offer more than a few very general observations. As regards the Bill itself, in its general lines, I have very little to say; except that, though I approve of it so far as it goes, I must confess I should have been glad if it had gone somewhat further in the direction of ascertaining and recording, not merely rights, but equitable and fair rates of rent, which would have been useful as a standard for all classes of landlords and tenants to refer to; and if it had cast aside altogether the idea of determining the raiyat's status according to the time for which he may happen to have held his land, an idea which has done so very much harm in the past in these Provinces. Still I am well aware there are excellent reasons for bringing forward the present proposition in the form in which it stands. I can only say that, such as it is, it will command my cordial and, if necessary, my active support. There is, however, one class of argument which has been brought forward by those who do not regard the Bill with favour, to which I must for a few moments give more detailed notice. The Hon'ble Kristodás Pál, if I rightly understood him, endeavoured to fortify the position of the Bengal zamíndárs, by asserting that their tenants were, through their means, in prosperous circumstances, and by contrasting the good condition of the cultivators of Bengal with the wretched condition of the cultivators in Bombay and other parts of British India. I think I may leave the condition of the raiyats in Bengal to the Bengal members who will follow me, and who will, if they feel inclined, offer proof of what I consider to be notorious, namely, the wretchedness of the raiyats of that Province. But as regards the condition of the raiyats in the Bombay Presidency, which the hon'ble member has described as being wretched in the extreme, I must emphatically deny that any such terms, or any such description, can be applied to them. If the means were here at hand, I could show with the greatest readiness, from the most ample statistics, reaching back for a number of years both of trouble and of plenty, that the Province has gone on increasing in wealth and prosperity during the last fifty years in which British rule has been gradually consolidated and elaborated. This growth and prosperity I could prove, not merely as regards the Presidency generally, but as regards particular districts. Taking even the districts to which the Dekkhan Agriculturists Relief Act applies, it would be easy to show that these very districts have largely increased in population, cattle, cultivated land, wells and other substantial signs of wealth. Taking the districts of the Presidency generally, they pay larger stamp and excise revenue than any other portion of British India, and taking even the four Dekkhan districts under the Act, they were able, when the famine came upon them, to send large sums in ornaments from their savings to the Mint, and they thus offered the best evidence which any unprejudiced man could desire of having been long rising under a beneficial system of assessment. But how, then, it may be asked, can these assertions be reconciled with the fact of the Dekkhan Agriculturists Relief Act and the outcry about the over-assessment of the land-revenue in those parts? In the first place, the Dekkhan Ríots Commission only declare that in these districts one-third of the population were in serious debt at all. Moreover, the bulk of those said to be in debt were not resident in any of those districts or taluqás which had been subject to the revision of assessment referred to in the extracts which the hon'ble member has read. I altogether deny that the revenue assessments are high. So far from reaching forty per cent. of the gross produce, as the hon'ble member supposes, they have been found to be only on an average from one-eighth to one-sixteenth of that produce. I would, moreover, state that the assessments are not based on the barbarous and unsound system of taking a fixed proportion of the gross produce, because in the Bombay Presidency we are fortunate enough to have a classification of lands, which renders any such rule-of-thumb method unnecessary. Whatever hardship or oppression may have been caused by the assessment has not been owing to the severity of it, but to certain incidents in the mode of its collection,—incidents which, I am glad to say, have considerably altered since I first alluded to them in this Council. If we now turn from this fact of light assessment to seek the causes of the indebtedness of the raiyat, I would point out that one of the principal of them is one which renders the analogy which the hon'ble member has attempted to draw altogether a false one. One of those causes is, that the land of the Bombay raiyat has been for the last thirty years transferable, while the land of the Bengal raiyat is not, or is not recognised to be so. In consequence of this transferability, the raiyats were of course able to borrow, and during certain prosperous times in 1865 they were tempted to borrow beyond all reason. When the times changed, the meshes of legal entanglement did not permit them to recover themselves. What, then, it may next be asked, have you to say about the throwing up of land? I reply that we

in Bombay are fortunate enough to have still remaining to us that customary law of India which the Bengal zamíndárs have overridden, and that the status of a raiyat over there does not depend either on contract or on the period of his occupation of the land. A raiyat there may, by giving notice, throw up his land when prices are lower or drought has weakened his cultivating powers, and may take it up again in better times, without any loss of status in consequence of not having held it during the intervening years. In short, we have an elastic system, which enables him to vary his responsibility at will, and to contract his operations in any year owing to famine or other causes. But, then, it may be asked, what is the cause of this outcry in Western India? That outcry, I reply, is essentially a zamíndár's outcry, and has been raised by two well-known classes of persons. In the first place, there are various petty Native chiefs within British territory who systematically take rents far above those fixed by the revenue survey and assessment, and they dislike that assessment, because it is a just standard, according to which they are periodically pressed by their own raiyats to moderate their demands. Again, there is a class of superior holders, who take from their tenants a certain share of the produce, and who, according to the customs of the country, pay the Government revenue out of their share. Consequently, they of course are anxious to see that revenue reduced to the lowest possible amount: and even though it were abolished altogether, these are the men who would be the gainers and not the raiyats whose advocates they pretend to be. These, then, are the causes which give rise to this outcry. And in this fact, that the outcry is a zamíndári outcry, is perhaps, to be found the real reason why certain members of this Council have testified their great sympathy with the circumstances of the raiyats in a far distant Province—a Province whose prosperity they have no eyes to see, and of whose circumstances they are profoundly ignorant. But the point in the argument of the hon'ble member, if I rightly understand it, is somewhat of a *tu quoque* nature. Supposing, he says, that our zamíndárs' rents are rather high, the rents received by Government are high also, and as we are more or less in the same position, you should give us the same facilities you have yourselves to recover these rents. This argument is partly a retort, and partly an appeal for stronger powers and a simple procedure for recovery of zamíndárs' rents. So far as it is a retort, it is, as I have amply shown, incorrect in fact, and devoid of application. So far as it is a basis of appeal, I would beg to point out that in the Western Presidency these powers, which he covets, are used where the assessment has been carefully graduated in accordance with the capabilities of the soil after a careful survey and record-of-rights; where there is a complete recognition of the customary tenure of India, and a system which has the elasticity to adapt itself to variety of seasons and means, and where, moreover, the assessment, which is fixed under this system, has been fixed for thirty years.

In Western India, I am glad to say that a large and increasing number of Native chiefs and landholders, who have sufficient enlightenment to recognise the advantages of this system, have called in the Revenue and Survey Department to survey their lands and fix their rents for them, have agreed to abide by their decision, and have introduced rates accordingly. Assistance to recover such rates is readily obtainable from Government. I would recommend the same course to the zamíndárs of Bengal; and when next they desire to come before the Government asking for additional powers to recover their dues, they had better accompany their request with the other, that these rents may be fixed on scientific principles for a term of years. I think, my Lord, that this is all that it is necessary for me to say regarding the Bill in its present form; but I may repeat that it will receive my hearty support."

The Council adjourned to Tuesday, the 13th March 1883.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 13th March, 1883.*

## BENGAL TENANCY BILL.

[The adjourned debate on the Bill was resumed this day.]

The Hon'ble Mr. Ilbert said:—"My Lord, I propose to leave to my hon'ble friend Sir Steuart Bayley, in whose charge the Bill is, the task of replying generally to the arguments which have been urged against it; and the very able speech of my hon'ble and learned friend Mr. Evans has relieved me from the necessity of dealing with such of those arguments as appear to be of a specially legal character. I do not intend to pursue further the discussion as to the precise position and rights of raiyats and zamíndárs, respectively, at the time of the Permanent Settlement. The interest of that discussion is mainly antiquarian; and the most important of the practical questions connected with it are, how far we have redeemed the pledge given to the raiyats in 1793, and whether what we now propose involves any violation of the contract entered into with the zamíndárs at the same time. I have endeavoured to answer both those questions to the best of my ability, and after listening very carefully to what my hon'ble friend Mr. Kristodás Pál had to say on the subject, I cannot help thinking that the argument based on the breach of contract is an argument on which he himself does not rely, and which, in fact, he does not even seriously urge. I may, however, be permitted to take this opportunity of removing some of the misconceptions which appear to be entertained as to the

meaning of one or two expressions which I used in the course of my introductory speech. When I compared the use of the term 'proprietor' in Indian revenue language, to the use of the word 'owner' in English statutory language, I did not mean to suggest that the position of the former was or might be that of a mere agent or trustee. I merely meant to point out that in the one case, as in the other, the legislature had pitched upon one of several persons having an interest in land, and treated him as an owner or proprietor for certain State purposes, without entering into the question of the interests of other persons. Still less did I mean to suggest, as the Hon'ble Rájá Siva Prasád thought I suggested, that the zamíndár is not entitled to call himself proprietor, or to speak of his interest as his property. My hon'ble friend, as every other zamíndár, was fully entitled to describe himself as proprietor of his interest in the land, and to speak of that interest as his property; but that fact does not exclude the co-existence of any number of other interests of any number of other persons in the same land. I am afraid, from the way in which the hon'ble member spoke of the Bill, that he is irreconcilably opposed to its principles, as well as to its details. But, however that may be, I can assure him that any suggestions which he may make for the improvement of the provisions of the Bill will receive most careful consideration from the Select Committee. I entirely concur with him as to the expediency of affording every facility to the landlords for making improvements upon their lands, and I understand that for this purpose he suggests, among other things, that when a landlord has made, or has proposed to make, an improvement, such as a well, he should be enabled to go to the Collector or some other officer and obtain from him a certificate showing the description of well he has made, or is about to make, the area likely to be improved, and the probable expenditure on the improvement (the hon'ble member will correct me if I am wrong); and that, upon the strength of that certificate, he should be entitled to make a corresponding increase in his rents. I think this a very useful suggestion, and it is one which is well worthy of consideration.

"Just one word about the *pattá*. I have not seen the Government form of pattá to which the hon'ble Mr. Kristodás Pál has referred, and I daresay my hon'ble friend the Lieutenant-Governor will have something to say about it. But, of course, I never intended to suggest that each and all of the stipulations contained in the *kabúliyat* which I read out were illegal or unfair. On the contrary, it was obvious enough that the zamíndár had taken a common form, and had engrafted on it some variations of his own, and it was those variations that were open to objection. It is all very well to say that stipulations for the payment of interest at an exorbitant rate, or for the payment of cesses, imposed by the landlord, are stipulations which no Court would enforce. But it is precisely this fact which makes them so mischievous. These stipulations are, in fact, attempts on the part of the zamíndár to make the raiyat pay, under colour of a contract, what no Civil Court would ever enforce him to pay."

Major the Hon'ble E. Baring said:—"My Lord, before proceeding to comment on the important question upon which this Council is now called upon to deliberate, I should wish to make one preliminary observation. It is, I am aware, difficult to argue the issues involved in the discussion on this Bill, without appearing a partisan of either the zamíndárs or the raiyats. For my own part, however, I altogether deprecate any such inference. My wish is—and I am sure the wish of the Government collectively is—to preserve an attitude of strict impartiality, to consider carefully the arguments which may be advanced, whether in support of this Bill or in opposition to it, and ultimately to assist this Council in arriving at such decisions as may be most conducive to the public welfare and most just to the conflicting interests involved.

"My hon'ble friend Mr. Kristodás Pál commenced the able and interesting address which he delivered to the Council yesterday, by saying that he must not be regarded solely as an advocate of the zamíndárs, for that his sympathies and convictions were quite as much with the raiyats as with the zamíndárs. I was glad to hear that statement of my hon'ble friend, but I must confess that, although I listened with great attention to my hon'ble friend's speech, I did not hear any arguments advanced from the point of view of the raiyat. I do not at all complain of this. On the contrary, I think it is a matter of congratulation both to the Government and to this Council that the views of the zamíndárs should be so ably and fully represented in this Council, as they are by my hon'ble friend. On the other hand, I trust my hon'ble friend will not be surprised if to some extent I take up the converse of his situation, and that he will not think, if I dwell more especially on those views which are especially associated with the interests of the raiyats, that I have any bias in the matter. I have no such bias. The reason why on the present occasion I dwell more especially on the claims of the raiyats is, because the superior education of the zamíndárs, and the fact that their interests are ably represented both in and out of this Council, enables them to bring forward their views to greater advantage than the circumstances of the case permit to the raiyats. It is therefore desirable that the arguments from the raiyats' point of view should be fully and publicly stated and examined.

"My hon'ble colleague Mr. Ilbert, in moving for leave to introduce this Bill, explained the circumstances under which the present Government has thought it its duty to undertake a general revision of the rent law in Bengal. It is not necessary, therefore, that I should dwell on those circumstances. I will only make one observation on the past history of the case.

"In the course of the discussions on this Bill, it may perhaps be said—and, indeed, outside the walls of this Council room it has already been said—that your Excellency's Government, finding the relations between the zamíndárs and raiyats in an unsatisfactory condition, resolved, *proprio motu*, to initiate legislation, with a view to placing those relations on a more satisfactory footing. A statement of this sort would very inaccurately represent the facts of

the case. Whatever may be the individual views held by members of the present Government upon the important political, social and economic problems involved in the legislation now proposed, nothing is more certain than that those individual views have in no way contributed to raise the issues now under discussion, nor have they accelerated or retarded by one day the advent of the time when the reform of the land laws of Bengal must, perforce, have been undertaken.

"In order to appreciate the reasons, whether remote or immediate, which have rendered legislation on this subject an unavoidable necessity, it is necessary to look back to a time when the *personnel* of the Indian Administration—whether that of the India Office, of the Imperial Government of India, or of the Local Government of Bengal—was different to that which at present exists.

"The facts which the present Government of India found in existence were, first, that, after some tentative efforts at partial legislation, a Commission had been appointed as a preliminary measure to a general revision of the rent law of Bengal; and, secondly, that the majority of the Commission, backed by the concurrent testimony of a long array of high authorities in past years, were of opinion that such a revision should be undertaken. Lastly, the Government of Bengal urged that a general revision of the rent law should be undertaken, and submitted a draft Bill having that object in view. Under these circumstances, I venture to think that it would have been a dereliction of duty on the part of the Government, if we had declined to undertake the onerous and responsible task which now lies before us.

"Independently, however, of this issue, which is one of comparatively minor importance, it remains to be considered whether the Government—in which term I include both the Government of Lord Lytton, which appointed the Rent Commission, and the present Government, which has to deal with its report—is justified in undertaking a legislative measure of such importance.

"It appears to me desirable that this question should be further examined, especially as the necessity of any general revision of the rent law has been denied by my hon'ble friends the Mahárájá of Darbhangá and Mr. Kristodás Pál.

"The necessity for legislation is urged from two quarters. The zamíndárs wish for certain amendments in Act X of 1859, their main grievance being that the existing law does not give sufficient facilities for the enhancement and recovery of rent. The grievances of the raiyats may conveniently be summed up in the phrase—borrowed from the discussions on the reform of the Irish land laws—that they desire, in a greater or less degree, the attainment of the three F's.

"I am aware that my hon'ble friend the Mahárájá of Darbhangá stated yesterday that the zamíndárs of Bihár do not require any legislation at all. At the same time I think I shall be right in saying that very recently the desirability of amending the law in the sense of giving greater facility for the recovery and enhancement of rent was not generally disputed, and that even now a very large body of opinion is in favour of such legislation. I need not, therefore, discuss this branch of the question. But the necessity of any further considerable revision of the law beyond what is necessary to facilitate the recovery and enhancement of rent is disputed. It is alleged that the present system of land tenures in Bengal has not hampered the prosperity of the Bengal peasantry; that no sufficient evidence exists which would justify a general revision of the rent law, and that, before any such revision is undertaken, further detailed enquiry is necessary.

"Then there is another argument to which allusion has not been made in this Council, but which I have seen frequently stated outside the Council. It is well known that the advocates of legislation adduce the raiyats in Pabná and elsewhere as a proof of the necessity for legislation. To this it is replied that these raiyats were caused by Government officials. As regards this statement, I will only say that there is a strong presumption that it is unfounded. I have certainly never seen any evidence in support of its correctness, and I observe that Sir George Campbell, speaking some while after the raiyat, said that he 'believed, speaking generally, it is certain that the law was, and, so far as the original matter of dispute goes, still is, with the raiyats.'

"I confess that an argument of this sort reminds me of those well-known lines in 'Rejected Addresses' which, I remember, have once before been quoted in this Council—

> 'Who makes the quartern loaf and Luddites rise?
> Who fills the butchers' shops with large blue flies?'

"And then the author goes on to say that the Emperor Napoleon I was responsible for these things. To the best of my knowledge and belief, the officials in Pabná and elsewhere were no more reponsible for the disturbances some few years ago than Napoleon I. was for the flies in the butchers' shops, and they are, perhaps, less responsible than that potentate was for the high price of the quartern loaf.

"Turning now to the question of the prosperity of the peasantry, I wish to remind this Council that my hon'ble friend Mr. Kristodás Pál cited the rapid growth of the Excise revenue as a proof of the growing prosperity of the people. No doubt the Excise revenue has of recent years grown rapidly, and the growth of this revenue is an indication of increasing prosperity. But my hon'ble friend must pardon me if I say that this fact does not prove his case. The question to be decided, for the purposes of the present issue, is not whether the peasantry of Bengal are prosperous or the reverse. Prosperity is a relative term. The question at issue is, whether the existing laws regulating the system of land tenures in Bengal hinder the peasantry of that Province from being as prosperous as they otherwise would be.

"It may tend towards the elucidation of this question if I give some figures with a view to showing the measure of agricultural wealth possessed by the population in the principal Provinces of British India, more especially as this is a point to which my hon'ble friend Mr. Kristodás Pál alluded in the course of his very able and interesting speech of yesterday. In the Central Provinces, the yearly value of the crop, per head of population, is Rs. 21·6; the payments for purposes of Government and irrigation, per head, amount to Re. ·72; the balance is Rs. 20·9. In Bombay, the yearly value of the crop is Rs. 22·4; the payments Rs. 2·2; the balance Rs. 20·2. In the Panjáb, the yearly value of the crop is Rs. 18·5; the payments Rs. 1·4; the balance is Rs. 17·1. In Madras, the yearly value of the crop is Rs. 19·6; the payments Rs. 1·7; the balance Rs. 17·3. In Bengal, the yearly value of the crop is Rs. 15·9; the payments Re. ·81; the balance Rs. 15·1 In the North-Western Provinces and Oudh, the yearly value of the crop is Rs. 16·4; the payments amount to Rs. 1·6; balance Rs. 14·8. It would be easy to show that, of the total payments, including rent, made by the people of each Province of India, a great deal less finds its way into the Government Treasury in Bengal than elsewhere. Thus, in Bombay, where the land-tenure is nearly all raiyatwárí, eighty-eight per cent. of the payments made are devoted to purposes of Government, being either paid into the Treasury as revenue, or devoted to the support of establishments required for public purposes. In Madras, where about four fifths of the country is under the raiyatwárí tenure, the proportion is sixty-nine per cent. In the North-Western Provinces and Oudh, under a zamíndárí system and temporary settlements, the proportion is sixty per cent. In the Panjáb, where there are a very large number of cultivating proprietors, the proportion is fifty-four per cent. In Bengal, under the Permanent Settlement, the proportion is believed not to exceed thirty-three per cent. This, however, is not the point with which I am immediately concerned. What I wish to show is the degree of agricultural wealth possessed by the several populations. I am aware how dangerous it is to place implicit reliance on statistical calculations of this sort. Notably, in this instance, it is to be observed that the produce of the cultivated area is not the only source of income to the cultivators. Milk, ghí, curds, hides, wool, live-stock and fuel have to be taken into account. For instance, the value of stock, dairy and forest produce in the Panjáb has been calculated at no less than twelve crores of rupees annually. At the same time, when we find that statistics, worked out without reference to any particular result,—for these calculations were not made with special reference to the measure now under discussion—lead to the same conclusion as those which would result from general knowledge of the subject, and from *à priori* inferences, it is, I think, impossible not to attach some importance to them. What, therefore, is the conclusion to which these figures point? They show, in the first place, that, under certain conditions, the raiyatwárí and zamíndárí tenures are consistent with an equal degree of agricultural wealth. Thus the agricultural wealth of the Central Provinces stands at the top of the list. The reason is obvious. In the Central Provinces, there is no keen competition between cultivators for land, but rather there is competition between landlords to get cultivators. But if we find a combination where the zamíndárí system exists, accompanied with great pressure of the population on the soil, but unaccompanied with any sufficient protection afforded to the cultivator against the landlord, it is there that we should expect to find the least degree of agricultural wealth; and that is precisely what we do find. The degree of agricultural wealth in the North-Western Provinces and Oudh and Bengal is considerably less than that of the other Provinces of India, and the North-Western Provinces and Oudh are in a slightly worse position than Bengal, because we know that the pressure of the population on the soil in those Provinces is somewhat greater than is the case in Bengal.

"I have so far compared the agricultural wealth of Bengal and other Provinces. I now proceed to institute a comparison between different portions of the Province of Bengal itself. The circumstances incident to the tenure of land, and consequently the degree of agricultural prosperity attained in different parts of the Province, present some wide differences. Thus, in the Chittagong Division, we are told by the Commissioner that the landlords 'stand in awe of their raiyats.' In some other districts, Dinájpur for instance, there is evidence to show that 'the demand for raiyats by zamíndárs is more than the demand for the lands by raiyats'.

"Of course where any real competition for raiyats exists, the latter, if they are unduly pressed, move off to other estates. In other districts, where this state of things is reversed, and the congestion of the population leads to excessive competition for land, there is abundant evidence to show that, under the existing condition of the law, the agricultural prosperity of the country is hampered. Perhaps the best way of bringing this point out clearly will be to compare the condition of different parts of the Province, which present dissimilar features in respect to the system of land tenures.

"Many official reports might be quoted to show the prosperous condition of the people of Bákirganj and the adjoining district.

"Thus an official report written in 1868 speaks of the cultivators of the Bákirganj district as 'litigious' and 'very easily excited.' But the report goes on to say—

'Nothing strikes one more in going through a village in this district than to see substantial homesteads, well-kept gardens, well-stocked poultry and farm-yards. It is no uncommon thing for the substantial howaldars of this district to keep their own poultry, not only for sale, but also for home consumption.' Then again 'I do not think the raiyats of any other district would have borne the heavy losses in cattle, from the murrain which has raged here to a most appalling extent, so well as the Bákirganj raiyats have done. I have sometimes been really surprised to see how easily the raiyats have replaced their losses by the purchase of more cattle. * * * * In the steady social advancement of the people, in their independence and substantial comfort and well-being, Bákirganj, a district comparatively unknown, neglected and despised, is about the best illustration of the blessings enjoyed under our rule.'

"Many passages from recent reports might be quoted in corroboration of this description. Thus, in the annual report on the Dháká Division for the year 1877-78, the following passage occurs :—

'The great and astounding calamities which followed the cyclone have been met and tided over; the soil is fertile; the people self-relying, industrious and perfectly able to defend their own'.

"Why is it that, in Bákirganj and in some of the adjoining districts, such a remarkable degree of prosperity exists? The reason is not far to seek. 'Bákirganj,' an official report says, 'is essentially a district of peasant proprietors.'

'Almost all the actual cultivators,' another report says, 'have to a certain extent a proprietary right in the land they cultivate.'

"I do not say that this is the only reason why these districts are exceptionally prosperous. I am aware that the rise of the jute industry has poured considerable wealth into these districts. But when this wealth accrued, what was the first use to which it was turned? The cultivators knew well enough that the acquisition of a proprietary right in the soil was essential to their permanent welfare, and, accordingly, we find that the first use to which they turned their newly acquired wealth was to take every opportunity of acquiring such right. The statistics of registration show that, in the three years 1877-78, 1878-79 and 1879-80, no less than 342,396 perpetual leases were executed in Bengal, by far the greater portion of which were executed in the districts of Jessore, Bákirganj, Farídpur, Noakhálí and Chittagong.

"I turn now to Bihár, and the contrast is indeed remarkable. There we find a peasantry which is described by Sir Richard Temple, speaking with all the weight of his great experience, as 'in a lower condition than that of any other peasantry with equal advantges which he had seen in India'. I see no reason to suppose that this description is in any way exaggerated. It is corroborated by the late Colonel Hidáyat Alí himself a zamíndár, well acquainted with the habits and customs of the people of Bihár, and whose opinion is stated, on reliable authority, to be unprejudiced and valuable. 'The raiyats of this Province', he says, 'namely, the heads of families, and even the women and the male adult children of the agricultural classes, though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them.' Let any one look at tables giving the average monthly wage of an able-bodied agricultural labourer, which are periodically published in the *Gazette*. He will find that the average wage in the Patna district is from Rs. 3 to Rs. 4 a month; in the Gya district, from Rs. 2-8 to Rs. 3; in the Shahábád district, Rs. 4; in the Darbhangá district, Rs. 2 to Rs. 3. Elsewhere in the rural districts of Bengal, we find the wage of the agricultural labourers ranging from a minimum of Rs. 5 in the Murshidábád district, to somewhat over Rs. 9 in Bákirganj, Maimansingh, &c., the usual rate being about Rs. 7 or Rs. 7-8. These, I think, are very eloquent facts. If any further evidence be needed, it is sufficient to compare the remarkable recuperative powers shown after the disastrous cyclone by the cultivators of Bákirganj and the adjoining districts, with the feeble powers of resistance against famine shown by the peasantry of Bihár in 1874. Those who were concerned with the administration of India in that year are not likely to forget the fearful rapidity with which, in spite of every effort of the Government, scarcity was with the utmost difficulty prevented from turning into widespread mortality from starvation in those poverty-stricken districts. What is the reason of this condition of things? It is thus stated by two very able officials, Messrs. Geddes and MacDonnell, in their report of January 7, 1876 :—

'The whole conditions of agricultural industry in Bihár', they say, 'are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or of credit. * * * The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry.'

"It is well known that in Bihár a large quantity of land is held under what is termed the *bhaoli* or métayer system of tenure. All who are conversant with questions of this sort know, generally, what there is to be said for and against this system of tenure. It has found an apologist in one of the most able economic writers of the century. I observe, however, in a series of articles republished from the *Hindú Patriot*, and in which the cause of the zamíndárs is defended with remarkable ability, that it is stated that 'the *bhaoli* tenant is as much secured in the possession of his holding as the métayer tenants are in Continental Europe'. A description is then given of the métayer tenancy in France. This description is taken textually from the pages of Arthur Young, who was a very acute observer on agricultural matters. It describes, not the métayer tenancy which now exists in some parts of Europe, but that which existed in France before the Revolution. It was in respect to this tenancy that Arthur Young said that—

'there is not one word to be said in favour of the practice, and a thousand arguments that may be used against it * * * * * Wherever this system prevails it may be taken for granted that a miserable and useless population is found'.

"It was strongly condemned by one of the greatest French administrators—Turgot. Mill has, indeed, defended the métayer system, but then, after alluding to the alleged prosperity of the people of Italy, where this system of tenure exists, he says :—

'I look upon the rural economy of Italy as simply so much additional evidence in favour of small occupation with permanent tenure.'

"Now, in the first place it is to be observed that Mill's account of Italian prosperity under the métayer system, which was based on the account given by Sismondi, is now believed to have been incorrect. It was refuted in a report by Mr. Herries on the land-tenures of Italy, which was laid before Parliament in 1871. And, in the second place, permanent tenure, which, as

Mill says, will always generate considerable agricultural prosperity, even under the disadvantages of the peculiar nature of the métayer contract, is exactly what the Bihár tenant has not got. This is what the Bihár Committee said on this subject:—

'An examination of the *jamabandí* papers of Bihár estates has shown that, while sixty per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. * * * This is an evil which is due to the general failure on the part of the landholders to comply with an obligation which the law has, from the earliest period of our rule, imposed upon them, namely, that of giving pattás to their tenants, specifying the boundaries and areas of their holdings.'

"The meaning of this is, I conceive, that the intention of the legislature in 1859, which was to facilitate the acquisition of occupancy-rights, has been completely defeated. But the whole of the report of the Bihár Committee should be read, in order to gain an accurate idea of the evils of the *bhaoli* system. It is shown by the report of that Committee that, when the raiyats decline to accept the zamíndár's terms as to the share of the produce, the zamíndár declines to make the appraisement. Further, when the appraisement is made, the zamíndárs do not allow the raiyats to take away the grain. 'It will be seen', the Committee says, 'that the zamíndárs of South Bihár practically take by way of rent as much of the crop as they choose to claim.'

"I think, with such facts as these before us, it is impossible to deny that the relative prosperity of the people of the Eastern districts in the one case, and the relative depression of the agricultural classes in Bihár in the other case, must to a very great extent be traced to the different systems under which land is held in those districts of Bengal.

"It is said that sufficiently detailed enquiry has not yet been made, and that sufficient evidence has not yet been accumulated, as to the necessity of any general revision of the rent law of Bengal. I am unable to admit the validity of this contention. Abundant evidence might be cited to show that in some parts of Bengal greater facilities are required to enable the zamíndár to recover the tenant's rent. As, however, this point is not, generally speaking, disputed, I need not dwell on it any longer. Looking at the question from the raiyats' point of view, we have the concurrent testimony of a large number of experienced officials, both past and present. We have the further testimony of a Committee composed of experienced gentlemen, both official and non-official, on the condition of the affairs of Bihár. We have the very able report of the Rent Commission. We have the concurrent testimony of four successive Lieutenant-Governors We have, moreover, as regards the levy of illegal cesses, the results of very careful enquiries instituted by Sir George Campbell in 1872, supplemented in many cases by abstracts of oral evidence, and a large quantity of documentary evidence.

"It will be borne in mind that, as could readily be shown by reference to contemporaneous literature, one of the chief objects of the authors of the Permanent Settlement was to prevent the levy of *abwabs*, or illegal cesses. Nothing is more clear than that this object has not been attained. I should like to read to the Council a list of the cesses which were reported by the Commissioner of the Presidency Division, in 1872, to be levied in the twenty-four Parganas. They are no less than twenty-seven in number. They are as follows:—

(1.) *Dák kharcha.*—This cess is levied to reimburse the zamíndárs for amounts paid on account of zamíndárí dâk tax. The rate at which it is levied does not exceed three pice per rupee on the amount of the tenants' rent.

(2.) *Chánda*, including *bhikya* or *maugon.*—A contribution made to the zamíndár when he is involved in debt requiring speedy clearance. It will be seen, therefore, that if, as my hon'ble friend (Mr. Kristodás Pál) says, the raiyat goes to the zamíndár when he is in difficulties, it sometimes happens that when the zamíndár is in difficulties he goes to the raiyat.

(3.) *Parboony.*—This is paid on occasions of pujá or other religious ceremonies in the zamíndár's house. The rate of its levy is not more than four pice per rupee.

(4.) *Tohurria,*—a fee paid on the occasion of the audit of raiyats' accounts at the end of the year.

(5.) Forced labour or *begár.*—This labour is exacted from the raiyats without payment.

(6.) *Marucha* or marriage-fee,—paid on the occasion of a marriage taking place among the raiyats. It is fixed at the discretion of the zamíndár.

(7.) *Ban-salami,*—a fee levied on account of the preparation of gur or molasses from sugarcane.

(8.) *Salami*, including all fees paid on the change of raiyats' holdings, and on the exchange of pattás and kabúliyats.

(9.) *Khárij Dákhil,*—a fee commonly, at the rate of twenty-five per cent., levied on the mutation of every name in the zamíndár's books.

(10.) Taking of rice, fish and other articles of food on occasions of feasts in the zamíndár's house.

(11.) *Bátta* and *Multá Kumrae.*—The former is charged for conversion from Sikká to Company's rupees; the latter on account of wear and tear of the same.

(12.) *Fines.*—These are imposed when the zamíndár settles petty disputes among his raiyats.

(13.) *Police Kharcha,*—a contribution levied for payment to police-officers visiting the estate for investigating some crime or unnatural death.

(14.) *Janmojattra* and *Rash Kharcha* are exceptional imposts, levied on occasions of certain festivals.

(15.) *Bardari Kharcha,*—a fee levied at heavy rates by a farmer taking a lease of a mahál.

(16.) *Tax or income tax,* levied by a few zamíndárs, to be reimbursed for what they pay to Government on account of this tax. (The list, from which I quote, was, it will be remembered, prepared in 1872 when the Income Tax was in existence.)

(17.) *Doctor's fees.*—This is levied exceptionally by a few zamíndárs on the plea that they are made to pay a similar fee to Government.

(18.) *Tantkur.*—A tax of four annas levied from every weaver for each loom.

(19.) *Dhaie mahál,*—a fee levied from every wet-nurse carrying on her profession on the zamíndár's estates.

(20.) *Anchora salami,*—a fee levied by persons carrying on an illicit manufacture of salt.

(21.) *Halbhangun,*—a fee paid by a raiyat on his ploughing land for the first time in each and every year.

(22.) *Mathurí jama,*—a tax levied on barbers.

(23.) *Shashum jama,*—a tax levied on muchís for the privilege of taking hides from the carcasses of beasts thrown away in the bhagar of a village.

(24.) *Punniah Kharcha.*—The contribution made by the raiyats on the day the *punniah* ceremony takes place.

(25.) *Bastu pujá Kharcha,*—a contribution made for the worship of *bastu purush* (god of dwelling-houses) on the last day of the month of *pous.*

(26.) *Rashad Kharcha,*—a contribution levied to supply with provisions some district authority or his followers making a tour in the interior of the estate.

(27.) *Nazrání,* or presents made to the zamíndár on his making a tour through his estates.

"I took this list at hazard from a number of others given in the reports addressed to Sir George Campbell in answer to his enquiry in 1872. It does not appear to represent an exceptional case. In some districts, fewer cesses are levied; in others, the evil has apparently attained even larger dimensions. Indeed, a case is cited in Orissa, as an example of the credulity of the raiyats, where the fixing of a line of telegraph posts was made an excuse for the levy of an additional cess.

"It is sometimes said that the raiyats themselves have not asked for any legislation. That statement is not correct. The raiyats have in some cases petitioned Government, and, if they have not come forward more fully on their own behalf, the reason is not far to seek. The Collector of Bhágalpur reported on the 15th May, 1872, that—

'if a formal enquiry were instituted, it would be almost impossible to make any raiyat come forward to divulge what he had paid; it is only incidentally that we come to hear of the exactions.'

"And, in forwarding the reports of 1872 to Sir George Campbell, the member in charge of the Board of Revenue (Mr. Schalch),—whose views, generally, were certainly not unfavourable to the zamíndárs—expressed himself in the following terms:—

'Even when the raiyats are aware of their rights, they very naturally prefer to bear the almost insupportable burden of oppression, rather than to follow a course of opposition which would probably result in even greater oppression,—nay, even in utter ruin.'

"I do not think that, under these circumstances, it can be any matter of surprise that the raiyats in some parts of Bengal have not spoken out more plainly than has been actually the case. Rather I think it a matter of surprise that they have spoken out so clearly as they have done.

"It appears to me, therefore, that the evidence upon which the necessity for a revision of the rent law is based is sufficiently conclusive.

"I now turn to the consideration of a wholly different point.

"It has been urged that legislation of the nature now proposed is contrary both to the spirit and to the express terms of the Permanent Settlement: in fact, that it involves a breach of the contract made in 1793 between Lord Cornwallis, on behalf of the British Government, and the zamíndárs. So much has already been written and said on this subject that I will not attempt to discuss it at any length. Nevertheless, the imputation of breach of faith is so serious, and the moral obligation on the part of the British Government to adhere scrupulously to any solemn pledges given to the Natives of India, of whatsoever class, appears to me to be so binding, that I should wish to state, as briefly as possible, why I consider that the argument adverse to the present Bill, based on the supposition that it involves a breach of contract, is wholly untenable.

"I do not know that the spirit in which, as it appears to me, the British Government should approach the question of dealing with the Permanent Settlement has ever been more clearly and comprehensively treated than by Sir James Stephen in his speech on the Local Rates (North-Western Provinces) Bill in 1871, and I wish to dwell briefly on Sir James Stephen's opinions, because, if I understood rightly, they were, I think, somewhat misapprehended by my hon'ble friend Rájá Siva Parsád in the address he delivered to the Council yesterday. Arguments had at that time been advanced to the effect that, as no one generation of law-givers can irrevocably bind another to a certain course of conduct, it was idle to object to any law on the ground that it was a violation of the pledges given at the Permanent Settlement.

"Sir James Stephen said that he had heard these arguments with regret, all the more 'because they undoubtedly have a certain *substratum* of truth.' 'The objection to the theory', he added, 'of which they are applications is, not that it is false, but that it is partial, that it

applies to legal right and wrong, and does not deal with the question of moral right and wrong.'

"Sir James Stephen then pointed out that it was specially to be borne in mind, in considering the moral justice of making any change in the terms of the Permanent Settlement, that the Government of India was not a representative Government. 'A really representative Government', he said, 'may deal with the pledges of their predecessors in a very different way from a Government like ours.'

"I think these observations of Sir James Stephen must command universal assent. Occasions may arise in India, as elsewhere, when it becomes both necessary and desirable for the legislature of one period to modify, or even deliberately to reverse, the measures adopted at some previous period. But certainly, in dealing with so solemn a compact as the Permanent Settlement, the very strongest possible necessity would have to be shewn in order to afford a moral justification for any legislation which might involve a violation of previous engagements. We are fortunately not called upon to decide whether in the present instance a sufficiently strong case exists for any modification in the terms of the Permanent Settlement, for I venture to think that it may be conclusively shown that the legislation now proposed is in strict conformity both with the letter and the spirit of the engagement taken by Lord Cornwallis.

"I say both the letter and the spirit, because high legal authorities differ in their opinion as to whether, in endeavouring to arrive at a decision as to the intentions of the legislature of 1793, we are confined to the text of the Statutes, or whether we may seek for a further exposition of those intentions in contemporaneous official literature. On a point of this sort the opinion of a layman is of little value. But I may perhaps be permitted to quote what so high a legal authority as Sir James Stephen said as to the latitude allowable in construing the text of the Permanent Settlement:—

'When I say', he said, 'that in my opinion the Permanent Settlement ought to be scrupulously observed both in letter and spirit, I do not mean to exclude the right on the part of the Government, which is essential to the true interpretation of all such transactions, to take into consideration the gradual alteration produced by time and circumstance, and the influence of surrounding facts. A great public act like the Permanent Settlement is not to be interpreted, and can never have been meant to be interpreted, merely by reference to the terms of the document in which it is contained. Its meaning must be collected from a consideration of the circumstances under which, and of the objects for which, it was made; and considering what is, and what is not, consistent with its terms, we must look at the gradual changes which have occurred in the condition of the country since it was enacted. This is the only way in which it is possible to understand fully transactions of this kind, and it is peculiarly necessary in the case of a transaction which, however important, neither is, nor professes to be, a complete and exhaustive statement of the relations between the Government and its subjects. The Permanent Settlement regulates only one branch of one part of those relations, and it must be interpreted by reference to others.'

"Whether, however, we look for the intentions of the legislature solely in the text of the Regulations, or whether we admit contemporaneous literature as evidence of those intentions, it appears to me that, in so far as the immediate point under discussion is concerned, we arrive at the same conclusion.

"Looking first at the precise words which the legislature employed, the text of Regulation I of 1793 (clause 1, section 8) is sufficiently clear. It reserves to the Government full powers to interfere 'for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil.'

"It has, however, been urged that Regulation II of 1793, which was passed on the same day as Regulation I, qualifies the reservation in section 8 of Regulation I. This argument is based upon the fact that the preamble to Regulation II of 1793, after dwelling on the expediency of abolishing the Courts of *Mál Adálat* or Revenue Courts, and transferring the trial of suits which were cognizable in those Courts to the Courts of *Díwání Adálat*, goes on to say that—

'no power will then exist in the country by which the rights vested in the landholders by the Regulation can be infringed or the value of landed property affected.'

"I must confess that I altogether fail to see how the language thus used in Regulation II qualifies the legislative power expressly reserved by Regulation I on behalf of dependent taluqdárs, raiyats and other cultivators of the soil. If the whole of the preamble to Regulation II of 1793 be read, the intention of the legislature becomes perfectly clear. Prior to 1793, rent and revenue suits had been tried in what were then known as the *Mál Adálat* or Revenue Courts. In these Courts Collectors of Revenue presided as Judges. It was pointed out in the preamble to the Regulation that—

'the proprietors can never consider the privileges which have been conferred upon them as secured whilst the Revenue-officers are invested with these judicial powers * * * * * * The Revenue-officers must be deprived of their judicial powers.'

"Further, these officers were to be rendered 'amenable to the Courts of Judicature.'

"When this was done, the Regulation went on to indicate:—

'No power will then exist in the country by which the rights vested in the landholders can be infringed or the value of landed property affected.'

"In point of fact, it is quite clear that the sole intention of the legislature was to give further security to the zamíndárs in respect to the permanency of their revenue assessment by a separation of judicial and executive functions, instead of allowing them to be united in the same individuals as was heretofore the case. The explicit reservation made in Regulation I of 1793 does not, therefore, appear to be in any way qualified by the provision enacted in Regulation II.

"I have so far dealt only with the text of the Regulations of 1793, and I have endeavoured to show that full power to legislate, with a view to the protection of the interest of the raiyats, was expressly reserved by the legislature. If, however, we admit contemporaneous official literature as evidence of the intentions of the legislature, the case becomes even stronger. In the well-known letter to Lord Cornwallis of the 19th September, 1792, the Court of Directors express themselves as follows :—

'But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the raiyats or the sums paid by them, with any view of an addition of revenue to ourselves, we expressly reserve the right which belongs to us as Sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance, the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.'

"Again, somewhat later, but before Regulation I of 1793 was passed, the Court of Directors expressed themselves as follows :—

'In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the raiyats and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as Sovereigns, of being the guardians and protectors of every class of persons living under our government.'

"Whether, therefore, we look to the letter of the Regulations of 1793, or whether we look to contemporaneous official literature for a further indication of the intentions of the legislature of that period, it is abundantly clear that power to legislate, in order to define the relations between the zamíndárs and the raiyats, was expressly reserved at the time the Permanent Settlement was made.

"I now turn to another cognate point. It is admitted on all sides that the *khudkásht* or resident raiyats had certain rights at the time of the Permanent Settlement. A great deal of learning and research has been devoted to enquiring into the precise nature of those rights. I do not propose to discuss this point. But I wish to say something about the rights of a certain important class of cultivators which accrued subsequent to the passing of Regulation I of 1793. At the time that Regulation was passed, a large tract of waste and unoccupied land existed in Bengal. These lands were not assessed to the payment of revenue. The whole of the rents payable in respect to these lands was left to the zamíndárs, under the terms of Lord Cornwallis's settlement. 'The rents of an estate', Lord Cornwallis said in his Minute of February 3rd, 1790, 'can only be raised by inducing the raiyats to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste-land which are to be found in almost every zamíndárí in Bengal.'

"It has been argued on high authority that, under the Permanent Settlement, the zamíndárs were left free by the legislature to let these unoccupied lands to raiyats upon whatever terms they thought proper; that, in respect to these lands, they had almost as much freedom as English landlords; and that the terms upon which these lands were let were a matter of contract regulated by the ordinary principles of demand and supply.

"It would perhaps constitute a sufficient reply to this argument to say that the reservation made in section 8 of Regulation I of 1793, which I have already quoted, expressly declares that, if necessary, legislation will be undertaken with a view to the 'protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil.' No class of cultivator was excluded.

"But I venture to think that the argument admits of a further answer. It implies that the authors of the Permanent Settlement deliberately intended to introduce freedom of contract as the economic basis on which the relations between the zamíndárs and the raiyats in respect to a very large class of lands was to rest.

"Now, all the evidence which has come down to us goes, I venture to think, to show that the authors of the Permanent Settlement never intended anything of the kind. Lord Cornwallis, in his Minute of February 3rd, 1790, after speaking of the privileges enjoyed by the raiyats in certain parts of Bengal, goes on to say :—

'Whoever cultivates the land, the zamíndárs can receive no more than the established rent, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving land to another would be vesting him with a power to commit a wanton act of oppression from which he would derive no benefit'

"Moreover, section 5 of Regulation IV of 1793, which was passed less than a year after the Permanent Settlement, prescribes that, after the completion of certain formalities, 'pattás according to the form approved, and at the established rates, will be immediately granted to all raiyats who may apply for them.'

"The 'established rates,' it is to be observed, apply under this Regulation to all raiyats. No exception is made in respect to raiyats who cultivate, or to raiyats who might subsequently

cultivate, the lands unoccupied at the time of the Permanent Settlement. And yet it is surely not unreasonable to suppose that, if the legislature had intended to deal specially with the raiyats cultivating those lands, which then formed so large a proportion of the culturable area of Bengal, its intention would have been expressly stated. Lord Cornwallis and his contemporaries were not ignorant of the fact that rents in Bengal were universally settled with reference to general or local usage, and that freedom of contract, in the sense in which we employ that term, did not exist. On the contrary, abundant evidence might be adduced to show that they were fully aware of it. Indeed, perfect freedom of contract was expressly excluded from the legislation of 1793. Section 65 of Regulation VIII of 1793 runs as follows :—

'No proprietor of land or dependant taluqdar shall contract any engagement with any under-farmer, or authorize any act contrary to the letter and meaning of this Regulation.'

"It does not, therefore, appear to me that, in respect to the unoccupied, any more than in respect to the occupied, lands, it can be contended that the Permanent Settlement placed the zamíndár in the position of the English landlords, free to regulate their relations with the raiyats without reference to customs. As Mr. O'Kinealy has said :—

'All that the Permanent Settlement did, all that the great founder of the settlement ever intended it should do, was to give zamíndárs, subject to custom, a perpetual lease of the lands at a fixed assessment, and subject to the restriction of State intervention if the conditions of the leases were violated to the injury of the raiyats.'

"I have said that Lord Cornwallis and his contemporaries did not intend to introduce freedom of contract as the economic basis which was to regulate the relations between landlord and tenant in Bengal. I may add that, had they endeavoured to do so, they would almost certainly have failed in the attempt. It is sometimes said that an Act of Parliament can do anything. It would be more correct to say that an Act of Parliament may prescribe that anything shall be done. However omnipotent may be the voice of the legislature, whether of England or of India, there is one thing that cannot be accomplished, whether by an Act of Parliament or by an Act of the Indian legislature. The habits of thought and customs of a vast population cannot be changed by any legislative enactment.

"What has been the result of endeavouring to plant freedom of contract in respect to land on the uncongenial soil of Ireland? It is told by the Bessborough Commission, in words that would apply with but little change to Bengal.

'That condition of society', the Commissioners say, 'in which the land suitable for tillage can be regarded as a mere commodity, the subject of trade, and can be let to the highest bidder in an open market, has never, except under special circumstances, existed in Ireland. The economical law of supply and demand was but of casual and exceptional application. It is generally admitted that, to make it applicable, the demand must be what is called 'effective'; in this instance it may be said that, whatever was the case with the demand, the supply was never effective. In the result, there has, in general, survived to him (the Irish farmer), through all vicissitudes, in despite of the seeming or real veto of law, in apparent defiance of political economy, a living tradition of possessory rights, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil.'

"Again, the legislature of 1793 endeavoured to introduce into Bengal written engagements between landlord and tenant, but failed in the attempt. Neither can this be any matter of surprise. I conceive that, generally speaking, the Bengal raiyats, like the Irish cultivator, regarded a written agreement, not as a means of acquiring something which he did not possess, but as a recognition that he might be called upon to sacrifice something which was already in his possession,—not as prolongation of his yearly tenancy, but as abridgment of the traditional tenancy which allowed him to hold his land as long as he paid the customary rate of rent.

"We know now a great deal more about the historical development of the idea of property in land than was known to Lord Cornwallis and his contemporaries. The researches of Sir Henry Maine, M. de Laveleye and other eminent men have thrown a flood of light on the subject. We know that the separate ownership of land is an economic idea of relatively modern growth; that in almost all countries the soil originally belongs to communities; and that, as society has advanced, a natural movement has taken place from common to separate property in land as in chattels. Without attempting to discuss the precise status of the cultivators of Bengal at the time when English rule was established, this much at all events may, I venture to think, be said with confidence, that the disintegration of the small societies holding land in common, which existed in other parts of India, and which still exist amongst the Slavonic races of Europe, was almost complete in Bengal. On the other hand, the idea of individual property in land, in the sense in which we are accustomed to employ the term in England, had not nearly been attained. An intermediate stage had been reached. Community of property no longer existed, but perfect freedom of contract in respect to the land was wholly foreign to the ideas of the people. Custom and not contract regulated the relations between zamíndárs and raiyats before the Permanent Settlement, at the time of the Permanent Settlement, and subsequent to the Permanent Settlement; and custom, and not contract, regulates, to a very large extent, those relations still, and would, without doubt, regulate them to even greater extent, if the legislature of 1859 had not imported into the country the alien theory of prescription.

"I should certainly be the last to press for the interference of the State in the regulation of any matters which can, without detriment to the public welfare, be left to settle themselves without any such interference. I dislike State interference, and regard with some apprehension the modern tendency, not only in India, but in England, to call in the aid of the State on occasions when it appears to me to be scarcely necessary. I should be the last also to say anything which might appear adverse to the application of sound economic principles to the solution of Indian questions. But I conceive that nothing is more likely to check the advance of sound economic knowledge in India than the misapplication of the canons of political

economy. To quote a single trite instance of such a misapplication. If scarcity arises in any district of India, the surplus food from other districts will, provided there be roads, be poured into that district, in order to meet the demand. That is what political economy means when it says that the supply will follow the demand. But, if no roads exist, the supply will not, and cannot, follow the demand, and mortality from starvation will ensue, as it has before ensued. So also, when political economy speaks of freedom of contract, it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth. There are, according to the Famine Commissioners, 9,752,000 tenants in Bengal, of whom 2,789,000 pay a rent of from Rs. 5 to 20, and no less than 6,136,000 pay a rent of less than Rs. 5, which latter rate, I may observe, implies a holding of from two to three acres. Can anyone who is acquainted with the facts say, in respect to the majority of these tenants, that their education, their knowledge of law and the circumstances under which they till the soil are of a nature to admit of that free and intelligent choice which is in the essence of the economical, as it is of the legal, theory of freedom of contract? I venture to think that any such contention cannot be maintained. The mass of the raiyats are uneducated. In Bihár, with its population of 22½ millions, less than one and three-quarters per cent. of the population can read and write, and elsewhere in Bengal the proportion is under four per cent. Many raiyats are ignorant of their legal rights, and others, when cognisant of those rights, are afraid to make any attempt to enforce them. Agriculture forms, and must continue to form, their only means of gaining a livelihood.

'The raiyats', the Rent Commissioners say, 'cultivate for subsistence, not with the immediate view to profit. * * * There is no wages fund, there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work where a surplus rural population can find employment.'

"Under these circumstances, it is idle for the present generation to think of establishing freedom of contract as the economic basis on which the relations between landlord and tenant in Bengal can be made to rest. The legislature must recognise the fact with which it has to deal, and the leading fact with which it has to deal is, that custom, and not contract, has in the main governed the relations between the zamíndárs and raiyats in Bengal from time immemorial, and that custom, and not contract, must in the main continue in the future to govern those relations.

"If the practical aspects of the situation are such as to necessitate the rejection of the theory of freedom of contract, and to force on the Government the obligation of interfering by legislative enactment in order to regulate the incidents of land tenure in Bengal, it is on every ground desirable that that interference should be effectual to remedy the evils which it is intended to cure. Whether that interference will be effecutal,—whether, on the one hand, due facilities will be given to the zamíndárs to make good their equitable rights; whether, on the other hand, tardy effect will now to a sufficient degree be given to the original intention of Lord Cornwallis and his contemporaries, in the sense of maintaining the raiyats in the enjoyment of their customary rights,—must mainly depend on the decisions which this Council will ultimately take. The Bill introduced by my hon'ble colleague Mr. Ilbert will, should it be passed into law, do much towards the accomplishment of these objects. It would, in my humble opinion, have done more, and it would have given greater hope of finality in the settlement of the difficult question now under discussion, if the land, and not the status of the tenant, had been taken as the basis of the recognition of the right of occupancy.

"But even as the Bill stands, it proposes a large and beneficial measure of reform. I hope and believe that it will be very generally regarded in this light, and that, both in and out of this Council, it will be discussed with the calmness and deliberation that the importance of the subject demands.

"In the remarks which I have addressed to the Council, I have confined myself to certain specific points. I trust that I have shown, first, that, so far as the present Government is concerned, it would not have been performing an act of public duty if it had declined to undertake a general revision of the rent law of Bengal; secondly, that, whether from the point of view of the zamíndárs or from that of the raiyats, the evidence upon which the necessity of a general revision of the law rests is conclusive; thirdly, that the legislation now proposed involves no breach of the contract made with the zamíndárs at the time of the Permanent Settlement, but may rather be regarded as the tardy fulfillment of the pledges given to the cultivating classes in 1793; fourthly, that the contention that freedom of contract must, under the terms of the Permanent Settlement, regulate the relations of the zamíndárs and the raiyats in respect to the lands unoccupied in 1793 cannot be maintained; fifthly, that custom, and not contract, has from time immemorial regulated the incidents connected with the tenure of land in Bengal; and lastly, that in view of all the circumstances with which we have to deal, the recognition of this fact should be made the basis of any measure which is now passed into law.

"I leave the discussion of the further very numerous points which arise in connection with this Bill to a later stage of the proceedings, when they will, without doubt, receive ample treatment at the hands of other and more competent authorities than myself."

His Honour the LIEUTENANT-GOVERNOR said:—"It was impossible to listen to the admirable statement of the hon'ble member on the introduction of this Bill, or to the later speeches addressed to this Council on the subject, without feeling what must be felt by anyone, even the least conversant with the voluminous literature and controversies on the question, that we are approaching the public discussion and, I hope, the equitable settlement of a large question which intimately affects the interests of a great majority of the people of this Province.

I am quite well aware that your Lordship's rule has been signalized by the consideration of many other very extensive reforms of political and administrative importance, and that these questions are still pending a solution; but though of the Local Self-Government scheme it may be asserted that it is taken up chiefly by the highly educated classes, and is with them rather a measure on which hopes and expectations are founded, and though we may lose our tempers over amendments of the criminal procedure to which the mass of the community is profoundly indifferent, here we are face to face with a problem in which nearly the whole of Bengal as an agricultural population is directly interested, and in which, therefore, to use the words of my hon'ble friend Mr. Kristodás Pál, the solution 'involves the life-problem of the people' of the country.

"Most who have preceded me have spoken as to the necessity for legislation. The statement made by the hon'ble and learned member in his opening address, the remarks which fell from the Hon'ble Kristodás Pál, and the facts brought forward by the hon'ble member Major Baring confirm that necessity; and, if anything further was needed, it would be found in the annexure to the Government of Bengal's letter of the 21st July, 1881, which shows that, for the last ten years at least, a general revision of the substantive portion of the rent law has been regarded as inevitable, and has been advocated by every section of the agricultural community, including prominently the British Indian Association, which represents the zamíndárs of Bengal. This call for a revision of the Rent Code has, I admit, not found expression only among those who claimed for the raiyat a clearer and wider declaration of his rights and privileges, but has been pressed as often and as strongly by those who demanded, in the interests of the zamíndárs, a simple procedure for the collection of rents, and the abrogation of sections which interfered with enhancement. Before Act X had been very long in force, in 1864, Sir B. Peacock raised objections to section 6 of that Act, on the ground that, in these permanently-settled districts, the rights of occupancy had been improperly enlarged; and, in the amendment to the law proposed by Sir William Muir a year or two later, the same objection was taken, in the view that the law of 1859 was unreasonably adverse to the proprietors of the North-Western Provinces. The demand, too, upon Government to reopen and examine the question as a whole is enforced again, not by isolated facts of a similar character from one part of this vast Province, but upon different and varying facts of a disturbing kind from every part of the Province. If the raiyats of the Eastern districts have learnt (mainly, I insist, by the exactions and oppressions practised upon them) the power they possessed in unions and combinations to resist the encroachments of the landlords and their agents, and have carried their opposition so far as to justify the plea of the zamíndárs that the refusal to pay the ordinary and regulated rents required the intervention of the legislature; if the agrarian disturbances in Bákirganj, Maimansingh, and notably in Pabná, disclosed the strained and hostile relations which existed between landlords and tenants, calling for special police arrangements for the preservation of the peace, what are we to say to the gross abuses which prevailed throughout Orissa, where specially, by the exaction of illegal cesses, the raiyats are described as the most impoverished and oppressed tenantry in India? and what are we to say to the systematized ignoring and nullification of the law in Bihár, because the cultivators were ignorant of their rights, and were subjected to the universal jugglery with holdings in the jamabandí papers, thus leading to the continual shifting of the raiyats from their lands, to prevent the accrual of the right of occupancy? In that part of the country, too, the peculiar system of thíkádárí assignments, and the quasi-feudal compulsion of indigo cultivation, gave additional cause for fear, inasmuch as all official enquiries tended to show that the whole conditions of agricultural life in Bihár were precarious in the extreme, notwithstanding the existence of a large and industrious population, of a fertile soil, and of many advantages of climate and position; so that, as the official report of the day said, 'the people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry.' All these were indications of a kind demanding the interference of the Excutive Government, and we find through the whole of this period, which extended to some ten or twelve years, that successive Lieutenant-Governors of this Province, brought to deal with the excited state of the country which these revelations disclosed, attempted, each in his turn, to provide by legislation for a modification of the evils. There is little doubt that radical remedial measures would have been adopted at a much earlier period, if many disturbing circumstances in the country, and especially the famine in Bihár and other places, had not necessarily diverted immediate attention from the subject; and when at last, in Sir Ashley Eden's administration, recourse was had to legislation, and then mainly in relief of the zamíndár for the speedier recovery of his rents, it was found that, in every different branch of this large and complicated subject, the controversies were so great, and the differences of opinion were so wide, that nothing satisfactory could be effected without a thorough re-examination of the questions connected with ejectment, distraint, instalments and deposits of rent, transferability of tenure and the numerous incidents involved in sub-letting. It was thus clear that the matter of the entire revision of the existing Rent Code had to be faced. Hence the Commissions in Bihár and, at a later period, in Bengal, and the amalgamation of the two proceedings with the one report upon which the late Lieutenant-Governor based his proposals, and upon which the Government of India submitted their views to the Secretary of State. The outcome is the Bill which we are now called upon to consider. I am sure no one, even looking at the mass of correspondence and reports which these volumes contain, can fail to see that it has been examined and discussed and reviewed, both officially and non-officially, with an industry, research and ability which few subjects have ever received even in this country. Official investigations have throughout been assisted very much by the independent labours

of the Famine Commission, and, if I may be allowed to express now my hearty general concurrence in the measure presented to us, it is in the conviction that, while the right of the occupancy raiyat is maintained on the prescription which the twelve years' rule of Act X of 1859 established, provision has been made to enable the raiyat to maintain that right, to be certified exactly of the amount which he has to pay for it, to resist illegal distraint, illegal cesses and illegal enhancements, not simply by the clearer declarations of the law, but by the power which the Bill confers to secure the survey of every estate and the record of every right upon it.

"I think we all agree that it would be impossible, on an occasion like this, to enter upon any minute examination of the details of this measure.

"It is a large, bold and comprehensive measure; but it has yet to undergo, I am glad to know, the careful scrutiny of a Select Committee, and perhaps what is of more importance, before it reaches the Select Committee it has to pass the ordeal of a more thorough criticism at the hands, not only of the experienced and able officers of Government, but of those who directly are interested in the land, and whom it will more immediately concern. If the general principles of the Bill be accepted, and the vote of to day will affirm that point, I have no doubt, when the Select Committee begin to consider it in November next, and further, when the Select Committee have finished their labours, we shall find the Bill changed and improved very much in its diction, definitions and, possibly to some degree, in its principles, by the attention which a wide collective opinion will bring to bear upon its contents. I am not careful, therefore, to follow the example which some of the previous speakers in Council have set, of examining the precise details of its sections and chapters; and I will limit my observations to the two principal features which seem to me to mark, in an especial manner, this new legislation, namely, the resolution of the Government to give a clear and established prominence to the fixity of tenure, including, thereby, a limitation of rents, and the freedom of transfer; and, secondly, to secure that result, not by the declarations of the law alone, but by the power also of enforcing those declarations by executive action. Perhaps the principle of the position which the proposed Bill has now most prominently asserted is that the raiyat with the right of occupancy must hereafter be regarded as a co-partner in the land which he occupies and cultivates. To the extent of his holding, he is to enjoy powers and privileges which, whatever the past policy or practice in different parts of the country may have been, the zamíndár will be bound to respect. The practical enforcement and recognition of this position will depend, not only, as heretofore, upon what the law declares (for experience has too clearly shown that is insufficient), but upon the executive ascertainment and record of the fact. I can quite imagine that it may be difficult for the zamíndár to accept this proposal without demur, for his claim has always been to an absolute proprietorship, in which the right is put forward in one shape or another to do what he likes with his own. But, subject to the conditions that we are dealing here with the raiyat whom, in my judgment, the old Regulations of 1793 alone attempted to protect, who rejoiced then in the name of the *khudkásht* raiyat, and who was established as the resident raiyat with the right of occupancy in the Act of 1859, I believe myself that such a raiyat has as strong a claim to the help of the Government and of the law to maintain and secure him in his position as long as he pays his rent, as the zamíndár has to be maintained and secured in his estate as long as he pays his revenue. The contention of the Government here is, I think, unassailable. It is supported by the positive declaration of the Regulation of 1793 which affirmed the Permanent Settlement; it is proved by its survival through all the controversies and struggles of more than half a century, up to 1859, and this against the always increasing predominance of the zamíndárí influence, and, I may truly add, of the culpable negligence of the Government throughout that period: and it is established definitely, notwithstanding the strongest opposition from the zamíndárs all over the country, by the substantive declarations of Act X of that year.

"It seems to me that it would be utterly unreasonable to attempt now to go behind the law of 1859. If, as your Lordship is aware, I have contended strenuously in the past discussions on the subject, that the legislators of 1859 were justified under all the circumstances of the case, in fixing the status of a raiyat with a right of occupancy by the twelve years' prescription, and that it would be unreasonable and inequitable to extend the benefits and privileges of the right of occupancy to every raiyat in the country, on the theory that Act X was a mistake, and that the intentions of Lord Cornwallis and his advisers included all raiyats in their benevolent protection, I am equally urgent in the present case that we cannot go back upon any discussion as to whether the occupancy right and such privileges as it carries with it must be limited, by the supposed intention of Lord Cornwallis and the Regulations of 1793, to to the few *khudkásht kudimí* raiyats of that day, and those who can now establish themselves as their direct descendants: our new point of departure must be the law of 1859. The despatch of the Government of India showed that their aim was, in recognition of the constitutional claims of the raiyats, to provide that 'the great body of cultivators shall be restored to the position which they held under the ancient law and custom of the country,' and it is seen from the reply which the Secretary of State has given to that despatch that the object could be attained by the maintenance of the principle of the twelve years' rule, as supporting the distinction deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent, and the non-resident or temporary cultivator. In the justice and wisdom of this decision I most cordially concur; because, whether we look at the case from the position of the Government in 1793, or the position of Government in 1859, the rule laid down in the last-named year has always appeared to me a just and equitable adjustment of the question, though I am ready to admit that, in some

respects, it must be regarded as a compromise. I suspect that our judgment is warped too frequently in this matter by the tendency of looking upon present circumstances from the standpoint of a very remote and different period. It has been urged more than once in this debate, and it is beyond dispute, that the position of landlords and tenants was in 1793-94 altogether different from that of the present day. In Lord Cornwallis's time, there was more land than there were people to till it. The competition was among the landlords for tenants, and not among the tenants for land. Under such conditions, every cultivator was welcome to clear the wastes. He was welcome, further, to remain upon his holding as long as he pleased; and, so far from eviction and enhancement being in vogue, the rivalry between landlords was to attract people to their zamíndárí by more favourable terms than were recognized under the pargana rates. As the Permanent Settlement receded, and the pressure of population upon the soil increased, this condition of things was very gradually reversed. The peace and order of British rule helped to promote the change. In Bengal (the Lower Provinces), wars, and even violent disturbances, have for long ceased. Pestilences and famines are yearly brought more under control, and the result has been an enormous increase of the population. According to the computations of the last census, it may be said that during the last century the population of Bengal has increased three-fold. But all this while the actual area of the land has stood still, and the surplus population, dependent almost entirely upon agriculture for its livelihood, has been forced either to fall back on inferior soils, or to crowd each other within the old margin of tillage. Both these processes have taken place, and both processes have led, by the operation of economic laws, to an increase of rent. As far as can be ascertained, the Government of the country never took any practical steps to act up to its earlier reservations in favour of the cultivator. Indeed, such interference as it did exercise was in the direction of the right of the landlord to enhance rents (Regulation V of 1812), and by the sale laws of 1841 and 1845 to declare his power of eviction of all but the settled resident cultivators. It was only when, some 25 years ago, the oppressions of the landlords threatened an agrarian revolution that the Government stepped in by a legislative enactment to arrest the natural increase of rent in Bengal, and the result was the land law of 1859.

"It is the fashion now-a-days to disparage the value of Act X of 1859; though, when it was passed, it was recognized as the Magna Charta of the raiyats. It is talked of now as a very inadequate instalment of what was due to the peasantry; and its imperfections and defects are imputed to its limitation of the benefits of the right of occupancy to a particular class of tenants, while the zamíndárs have always condemned and opposed it as an infringement of the Permanent Settlement. Here again, it seems to me, we ignore the position and circumstances with which the Government and the legislature had to deal when it undertook the rent legislation of that year. The fact is that, whereas 90 years ago the State divested itself of most of its rights as landlords, and created a proprietary body, and although it very carefully reserved to itself the power to take such measures as might seem expedient for the protection of the raiyats, no kind of attempt was made to act upon that reservation by a positive definition or declaration of the right till 1859. In that interval of 66 years, that is, between 1793 and 1859, while the proprietary body grew in strength and prospered in wealth, village communities perished, the 'pargana rates' (by which the assessment of the resident cultivator's rent was limited) disappeared, and almost every vestige of the constitutional claims of the peasantry (if ever such existed beyond a small privileged class) was lost in the usurpations and encroachments of the landlords. In that interval, all that Government had ever done was to confirm and consolidate the position of the zamíndárs as absolute owners of the land. They had done so by their legislation and by their executive orders and arrangements. The zamíndárs were made every year more and more responsible for the peace and order of the districts in which their estates were situated. They had to supply provisions for the military expeditions and marches of troops passing through their properties; they had to maintain at their own cost the rural constabulary required for the public tranquillity; they were chargeable at their own expense for the performance of many duties which, if they relieved the Government, enhanced the zamíndár's influence and independence; and, while the zamíndár's power grew and strengthened, the rights of the cultivators of the soil gradually diminished, and almost disappeared. This is no exaggeration of the state of things upon which the rent law of 1859 supervened. Feudalism on the one side, serfdom on the other, was the problem Government had to deal with, and that in a case in which its most solemn pledges had been given for securing to the cultivators their rights and the enjoyment of the fruits of their industry. I cannot describe the position more effectively than in the words which Sir William Muir used, when considering the amendment of the law some six years later.

'There is', he wrote, 'a very general consent that in the Native state of things, the resident raiyat, simply as such, is throughout the Continent of India possessed, as a rule, of a right of hereditary occupancy at the customary rates of the vicinity. This may easily be conceived as the normal condition of the cultivator, where there is no proprietary right, properly so called; or where the zamíndár and village communities possess (as under Native rule) the proprietary right only in their own fields, and the remainder have merely the right of management. But the question arises whether such a condition is compatible with the system under which we have recognized a proprietary right in the zamíndárs over the entire area of their estates, or have conferred it upon strangers. It is true that the proprietary right has nowhere been created without the stipulation that all other rights existing by the custom of the country shall be maintained. Everywhere the subordinate rights in the soil have been strictly guaranteed. But it is conceivable that a right immediately accruing from the simple occupation of land,—when that land is claimed by no proprietor,—should not accrue, at least so simply and easily, where a proprietary title in the land already vests in another. The change of circumstances would naturally require, at any rate, a longer and stronger prescription. From the proprietor's point of view, it has been urged that no hereditary title can accrue at all by prescription subsequent to the creation of his property. From the raiyat's point of view, it is urged that the title of the resident cultivator is one of the subordinate rights which the Government has bound itself to

maintain, as before, inviolate. Every shade of opinion exists between these extreme views. The doubt and difficulty surrounding the question has arisen from the natural endeavour of the British Government to combine the benefits of a full proprietary title with the maintenance of the rights of cultivators as customary throughout the country.

'In the course of time this question was answered, but very indefinitely, by enactments recognizing the privilege of hereditary occupancy, as created, no longer by simple residence, but by residence of *long* duration. Long residence was held to confer the old hereditary right of the country. But no attempt was made till the passing of Act X of 1859 to define by law what precise length of residence was requisite for the purpose.

'The first draft of that Act contained a provision which constituted *three* years as the term of prescription for a resident raiyat.* The section was criticised on the one hand as too narrow, because confining the privilege to 'resident' raiyats; on the other as too wide, because not requiring a longer period to establish the prescriptive right. A general consent of opinion was found to prevail, both in the North-Western Provinces and Bengal, that twelve years would be a more appropriate term; and that was accordingly adopted in section 6 absolutely and without reference to residence.'

* 'Resident raiyats cultivating land not previously in their occupancy shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same for a period of three years.' (Section V of Bill read a first time on 10th October, 1857.)

"Now, this twelve years' prescription was no arbitrarily selected period. It was originally proposed that a three years' rule should be made as the term of prescription for a *resident* raiyat. It is observable that the search was always for that which would most fairly and accurately describe the resident raiyat, because it was to the resident raiyat, and to him alone, that any ancient privileges and rights appertained. But the enquires of the time most clearly established that a twelve years' prescription would more appropriately define the class to whom the benefits should be declared by the law. I think, therefore, myself we should have committed a great error if we had given up this rule of twelve years. It has now been in force for nearly a quarter of a century, and it generally understood and accepted, and we cannot lightly ignore what I believe to be the long recognized custom of the country, sanctioned by the policy and laws of the Government.

"Frequently we have heard in the course of this discussion that the zamíndár considers it a great grievance that facilities should be afforded for the accrual of the right. Now, I have never been able to understand on what motive, except that of an immediate temporary gain, the zamíndárs have insisted on any right of unlimited enhancement, or of the prevention of the growth of the right of occupancy. Certainly, it is a very short-sighted policy, and whenever it has been practiced by the high-handedness of the zamíndár, it has found its retribution in a hostile tenantry, in combinations and leagues to repudiate rents altogether, and, when times of scarcity or famine come, in the utter ruin and desolation of the peasantry, on whose exertions depend the effective cultivation of the soil and the payment of the rent to which the zamíndár looks for his income. Let me read to you the description of a peasantry whose rights in these directions have been respected. We had to make enquiries the other day into the question of the preparation of the table of rates, and through the courtesy of the Mahárájá of Dumraon, one of the areas selected was a portion of his property in the Shahábád District. Regarding this, the Collector of the District, Mr. Nolan, wrote as follows:—

'The peculiarity of the selected tract is, that it is cultivated by raiyats of whom a considerable proportion have these *guzastha* rights, while nearly all have occupancy rights, and that the same leniency of the landlord which permitted such privileges to grow up and continue has prevented him from generally enhancing rents on other lands. It is not, therefore, a good example of the general condition of the district, and I objected to its selection for these enquiries, on the ground that it was not typical, and that there was no prevailing rate. But, if in these respects it affords less information than could be wished, its condition is worthy of the attention of the framers of the Bill on other grounds. It is the object of some of the framers of the present Bill to secure for the raiyats of Bengal, as a body, rights of occupancy at moderate rents, which, they contend, would insure superior cultivation through the improvements to be expected from those who enjoy security of title, a certain prosperity in ordinary times, with the credit necessary to enable cultivators to tide over periods of famine, without becoming a burden on the taxes, and which would also, it is urged, tend to give to the tenants the independence and manliness of character generally found among peasant proprietors. On the other hand, there are many who believe that low rents and security end in sloth, the sale of the land to speculators, and in the end to sub-letting at a rack-rent. It would be most important to ascertain whether, in the selected tract, the conditions which it is proposed to create elsewhere have led to the results anticipated by the one school or the other.

'I think that there can be no doubt on such a question. Sub-letting is not unknown in Bhojpur, and some of the cultivators are in debt; but these are exceptional cases. The general rule is that the raiyats cultivate their own lands with their own small capital, and, where they sell their holdings, it is to others of their own class. Their industry is marked and has resulted in the clearing of the jungle with which much of the land was covered fifty years ago, and the creation of a cultivated area as well planted with fruit trees, as well irrigated from wells, and as well fenced, as any I have seen in India. No one can encamp for a day in the tract without being struck with its exceptional prosperity, which contrasts strongly with the backward state of those parts of the district in which rents are high and occupancy rights unknown. The credit of the cultivators is so good that, as you informed me, they generally borrow at the rate of twelve per cent., that is, on as good terms as their landlord. There would, therefore, be no anxiety whatever as to their surviving without assistance a period of ordinary famine. As to their character, the objection I generally hear to it is that it is *too* manly and independent. The Bhojpur wrestlers have a name throughout the country, and every man carries the large Bhojpur *lathi*, which he can use with great skill. They are equally ready to defend themselves in Law Courts with which the complication of rights inseperable from any system where the majority possess interest in land has rendered them familiar. I have always found them open, communicative, ready to deal or to serve, and their honesty is proved by the low rate of interest demanded from them; but they have another side of their character for any one who attempts to oppress them.

'I think that these facts should be brought to the notice of Government as having a certain bearing on the general policy of the Bill. In the area to which your inquiries are confined, it would, I submit, appear that rights of occupancy at easy rents have been followed by comparative industry and prosperity, and with their usual effects in the moral character of those who enjoy them.

'With regard to your remark that the low rents may be due to mismanagement, I may say that it has been the misfortune of the Indian raiyats that so many have considered the raising of rents a proof of business ability. In this instance, the raiyats have not, as in most estates, been transferred from one purchaser at an auction sale to another, until they fell into the hands of some speculator in land who could enhance the old rents to excess. They remain under the Dumraon family, who have owned the land for centuries. That such a

family, wealthy even with existing rents, should have allowed them to remain at a rate consistent with the happiness and prosperity of the dependents, I consider a proof of excellent management, and presume it was under such an impression that Government conferred titles on the late Mahárájá and the present manager. I think the Rájá must be better off, surrounded by contented and loyal peasantry, than he would be if his family increased their income at the expense of alienating the feelings of their tenantry, as others have done. I do not say this as imputing an opposite view to you, but because I think it of real importance that, in any public correspondences, conduct which contributes to the happiness of the country should be recognized. The opinion of the older families, as to whether they should respect their own good traditions in this respect, may be represented as wavering under the influence of the example of the new auction purchasers, and an impression that Government regarded their leniency as weakness and mismanagement would have a bad effect.'

"I cannot help thinking that there is a great deal in this rather long extract which I have read from a district report, which is pregnant with facts, which the zamíndárs of the country would be wise to lay to heart. If they do so, we may realize the hope of a successful adoption and practical application of a measure which, in its primary object of securing fixity of tenure on reasonable and equitable rents, will give to the country a contented, peaceable and thriving agricultural community.

"Now, my Lord, to come to my second point. I am free to confess that, in my belief, the enactment of even such a liberal measure as that now before your Lordship's Council will not produce these desirable results, if unsupplemented by executive action of a kind to which I think hardly sufficient attention has been paid in the course of this debate. I am very glad to find from Mr. Evans's remarks that he is quite in accord with me on this matter. If there be any who think that the rights of the many millions of people who subsist on the soil of Bengal can be defined and secured by the enunciation of inflexible rules of law; if there be any who, heedless of the lessons of the past, trust for the welfare of the community to the resolutions of this Council alone, I certainly am not of them. Rather, I am among those who believe that in such a momentous undertaking as this Council is now concerned with, the battle is but half won when the legislators' work has been successfully accomplished. He only reaps the full fruits of victory who pushes his advantage; and, unhappily, the history of this Council is not free from cases where legislative successes not followed up by executive action have resulted in administrative failure. By the Bill now before us, the declaration of liberal principles in dealing with rent, and the recognition of tenant-right, have been carried, if I do not say too far, certainly as far as the circumstances of the case demand; but I have no hesitation in asserting that, if the Government of Bengal were to rest satisfied with the sanction which the Bill, when passed into law, will confer on these principles, this controversy would in a very few years be re-opened afresh, with far slighter chances of a peaceable solution than now exist. We cannot alter the state of the country, nor amend the abuses of generations, by a stroke of the pen. The utmost that this Council can do is, by wise legislation, to create a tenancy towards improvement, which, if followed up by well directed and persistent executive action, may, in course of time, lead to better things. This Bill undoubtedly possesses potentialities for good. But so did Act X of 1859 in the opinion of all the able men who assisted at its enactment. If this Bill, a quarter of a century hence, is not to be exposed to the animadversions levelled to-day at Act X, then the Government of Bengal must adopt active measures to enforce its provisions. It must, by a detailed record-of-rights and liabilities of all interested in the land, provide against the continuance and renewal of abuses which now weigh on the springs of industry and check the prosperity of this Province. Such a record-of-rights is no new panacea for the agrarian difficulties by which we are now surrounded, neither is it an untried experiment. In his Minute of the 8th December, 1789, Sir John Shore recommended such a procedure to Lord Cornwallis, who though acting, as all know, from the most benevolent motives, unfortunately rejected the counsels of his sagacious adviser. That Lord Cornwallis's rejection of Sir John Shore's advice was unfortunate most men now admit; for, wherever circumstances have since permitted of the enforcement of the principles then advocated by Sir John Shore, whether in permanently or temporarily settled estates, such enforcement has been followed by complete success. Wherever it has been ignored, difficulties and troubles have been the consequence I find some apposite illustrations of these circumstances in the papers now before the Council. For instance, in a letter from the Collector of Gházipur, dated 15th December, 1881 (written in answer to some enquiries originated by the Revenue and Agricultural Department of the Government of India), the following important passage occurs:—

'We have had record-of-rights (in the Gházipur district) for the last forty years, which, though prepared with extreme haste, has been throughout that period the touchstone of all rights. So far as tenant-right is concerned, it is incontrovertible, for there is nothing to produce to contradict it. Both zamíndars and tenants appeal to it on all occasions as to the ultimate criterion of the rights. With regard to village boundaries, the details of the plan then adopted left an opening for a good deal of vexatious litigation, which is not quite yet extinct. As to proprietary right, the record is not very full, although it was in this direction that the greater number of contests arose during its preparation. On the other hand, the said record, prepared by Messrs. C. Raikes and W. Vynyard in 1840-41, has been *the salvation of the tenants' rights*, especially of those who claim to hold at fixed rates.'

"That, my Lord, is evidence of undoubted authenticity. Comparing the state of affairs in Ghazipur, a permanently-settled district, as described by that evidence, with the state of affairs in the adjoining district of Sáran, as described in the rent papers, the difference at once challenges our attention, and proclaims the efficacy of the procedure which can compass such admirable results.

"Nor is the testimony of facts wanting in Bengal itself to the same effect:

'Had a work of the sort', says Sir Henry Ricketts, referring to the settlement of Katak, 'never been accomplished, there might be misgivings and hesitation before commencing such an undertaking But such a work has been accomplished, and the success has been greater than was expected, even by those who expected most. Previously to the settlement of Katak, the Province deteriorated each year, the people were discontented and

embarrassments and difficulties increased. Since the settlement, the Province has flourished, the inhabitants have been among the most peaceful and well disposed of our subjects; there has been less agitation than in any other part of the Empire. Let Bengal be treated in precisely the same manner, and there is no reason why there should not be the same result.

The passage I have now quoted was written twenty years ago; and it was written by a gentleman, one of the ablest revenue-officers in the country, who was the author of the settlement and who had a parental fondness for his work. But there was the fatal fault in Katak, that no proper provision was made for the maintenance of the record, and the result was what we find described in the 9th paragraph of the Government of India's despatch of the 21st March, 1881, namely, the loss of all the advantages by the utter failure to keep up the records in order and accuracy.

"If it be, as it ought to be, an admitted principle of revenue administration in India, that the rights of the several classes interested in the soil shall be expressly declared and recorded by some method or other, in documents accessible to all, then it must be confessed that the revenue administration of this Presidency is defective. Settlement proceedings, involving records-of-rights, secure in many portions of India that essential condition of agricultural prosperity, but there is no such assurance in Bengal. Having rejected the wise counsels of Sir John Shore, to which I have already alluded, the framers of the Permanent Settlement sought to secure the objects at which he aimed—objects recognized by them, as well as by him, to be of the utmost importance—by inculcating the necessity of an interchange of lease and counterpart between zamíndár and raiyat. How far they were successful, even when an interchange was effected, the case 'from real life' cited by my hon'ble friend Mr. Ilbert, when introducing this Bill, will satisfy the Council; and I am afraid what he has brought forward is only illustrative of what takes place in many portions of this Province. This is how the case stands—I quote from the report of a respectable pleader, himself a zamíndár, which the Council will find among the Bihár papers:—

'The law entitles the Bíhárí raiyat to a pattá and receipts, yet he seldom, if ever, gets any. The law declares the exaction of *abwábs* as illegal, yet how numerous and heavy are the *abwábs* that we zamíndárs exact from him.'

"My hon'ble friend Major Baring gives us a very instructive list of the irregular cesses levied in Bengal. The quotation proceeds—

'His hereditary tenures are altogether exempted by law from liability to enhancement, yet how, at each stage in the transfer of the zamíndárí, and how easily, when he sets up his head against us, we, without regard to law and justice, add something to it every year. The law protects him against ejectment, yet how often without any (effective) opposition from him, or without resorting to law and procedure, we turn him out of his and his father's land. It is illegal and a criminal offence to extort rent from him by duress, yet our *gumáshtas* (agents) and *herabils* (runners) sit at the door of his house preventing egress and ingress, and deprive him of the use of the village well (the writer might have added of every other convenience of life) until he pays off our rent. How frequently, for the same purpose, we bring him to our Kacharí and detain him there against his will till he satisfies our demands.'

"Such, from the lips of a Native zamíndár, appears to be a faithful account of what happens in many portions of Bihár, where no written contracts are exchanged; and, if Bengal claims exemption from such an indictment, I would point to a register of petitions from raiyats to Government (a copy of which I hold in my hand), showing that every form of complaint of oppression and illegalities has been represented to Government from every part of the country.

"I might, with extracts of a similar character, detain this Council for many hours longer, but each later fact would be in substance but a repetition of each earlier one, and all would point to the same conclusion, namely, that no matter how excellent and liberal the rights provided for by a law may be for such a population as we have to take count of, it cannot be doubted that, until a record-of-rights shall have been completed, a peasantry will, to use Sir John Strachey's words, 'remain the victim of chicanery and oppression, and that our Courts will be systematically made use of for the perpetration of injustice.' 'We shall probably,' says Sir George Campbell in 1873, 'have the whole of the real question in our hands, if we make an attempt to settle any considerable part of it; and we shall scarcely be able to stop till we have made a settlement of Bengal, adjusted and recorded all rights and all incidents of tenure, and created a machinery for perpetuating and continuing the record-of-rights and keepings account by public officers under a system such as the framers of the Permanent Settlement designed, but their successors wholly abandoned,—a very long, difficult and expensive, but a necessary, process it will be.' Long it undoubtedly will, and expensive it may, be, though not so expensive as some may think. But the duration and the cost will be as nothing compared with the manifold blessings such a measure would confer on this Province. It will be a permanent possession, restoring peace and preserving peace, for, thenceforward, all will know that nothing can be gained by disagreement. Your Lordship will, therefore, understand what high value I place on those provisions of the Bill which provide for a field survey, a settlement of rents and record-of-rights, and how anxious I am that those provisions should be hedged round with no needless limitations.

"So far, my Lord, I have dealt with the main points of principle to which in my opinion especial attention is necessary. I have not attempted to enter upon any discussion of the details of the Bill. In my judgment, the Select Committee must do that after the full consideration the measure will receive during the next few months. But I cannot help saying that, as at present advised, I am unable to accept the provisions of chapter VIII of the Bill, which bears upon the question of compensation for improvements and for disturbance. I think, too, though I myself have suggested a twenty per cent. limitation, that it may be

impossible to enforce a uniform limitation of that kind in all parts of the Province, and the proposal, I understand, is only suggested tentatively, and will come up for the full deliberation of those who will have to consider the Bill in Select Committee. So also with the chapter dealing with the procedure for the realization of rents; it requires in my opinion very much more examination than it has yet received. In India, it is said, as in Ireland, it has been too much the custom to assume that the landholder is exclusively to blame for the existing state of things as regards the generally unsatisfactory condition of the agricultural districts; but, while the wrongs of the raiyats are freely discussed, the case of the landlord is hardly ever thought of; and yet there is a zamíndárí side to the question, which it is impossible to ignore. I know that the landlords of these Provinces have been very often to blame; many of them deal harshly with their tenants, and but few have done much to improve their estates. From all, however, that has come out in the published papers, it is certain that remedial measures in the interests of the tenants must be accompanied by some provisions to secure the interest of landlords as well. The existing system of coercive processes, and the agency through whom they are served, requires thorough reform. The execution of decrees for instance, which is a most important part of the process for realizing the demand, is inefficiently directed. The whole of this branch of the subject is of extreme importance, both from the zamíndár's and the Government point of view. The Government is the possessor of large estates of its own, which it manages through its own officers, and any means to facilitate the collection of rent will be of great advantage. But the importance of the matter goes further, and it is one which has an especial interest for the Financial Member, that the Government depends for its revenue upon the punctual payment of the rent to the zamíndár. If we cannot give facilities for the realization of one, we incur some risk of losing the other.

"It remains to me, my Lord, to refer to one other point, and that is the statements which my hon'ble friend Mr. Kristodás Pál made yesterday in reference to the kabúliyat to which the Hon'ble Mr. Ilbert took exception in his opening speech. I understood my hon'ble friend to say that the kabúliyat which fell under censure was simply a reproduction of the form of kabúliyat which the Government used on its own estates, and that, at any rate, any censure which might be passed on the zamíndár must fall in the same measure on the shoulders of the Government and its officers. I am not here to defend the Government, as an immaculate body which is above suspicion; much less to defend all the mistakes of my predecessors. But I really do not think when we come to examine the matter, that my hon'ble friend has in this instance made out any case for condemnation of Government. I may say that, before this subject was referred to in this Council, I had heard something about it from an annoymous petition which I received on the subject. As a rule, I do not deal with anonymous petitions, except to throw them into the waste-paper basket; but the statements made on this occasion were so very definite with reference to the alleged malpractices of an officer of Government in his dealings with his raiyats, that I thought it my duty to ask the Collector of the Twenty-four Parganas whether there was any truth in the charge which the anonymous writer had brought to notice, namely, that a criminal information had been laid against the agent of the zamíndár on a charge of cheating, and that several cases were pending in the Courts regarding these particular kabúliyats. The reply which I got from the Collector was that the statements were quite true, and that the raiyats had a strong case It was alleged that the kabúliyat given to the raiyats was entirely different from the arrangement which had been made between the parties pending the exchange of agreements; that this charge had been tried and had fallen through; but, as the writer of the anonymous petition said, not from entire disproof of the correctness of the charge of cheating, but from want of sufficient proof for a conviction.

"Now, as regards the Hon'ble Mr. Kristodás Pál's statement in respect to the condemned kabúliyats, that they differ in a small degree only from similar documents issued by the Government, I have taken some pains to ascertain what the facts were. The facts are these: Sir R. Temple having wished to encourage the exchange of pattás and kabúliyats, and to facilitate the general registration of such documents, caused a form of pattá to be prepared which would contain all the ordinary stipulations in such cases, together with those of an exceptional nature, A printed form, general in its application, it was thought, would save all parties a great deal of trouble, and would secure other advantages. The form was not put forward as a perfect form, which the Government, if it could have its way, would have always enforced. The object was chiefly to facilitate registration, and as such a form must provide for a diversity of customs in various districts, it consequently embraced some provisions which were contradictory; and when his hon'ble friend quoted the eleventh provision in the form as being discreditable to the Government, he ought in fairness to have stated that an alternative provision was before his eyes. The Government was only anxious that whatever provisions were adopted should be expressed in the document, so as to induce a freer recourse to registration. I have before me a translation of the form of kabúliyat which the Government issued, and all I can say is that if anything can be different from the form of kabúliyat which my hon'ble friend Mr. Ilbert read out, it is this document. To make this clear to the Council I will read out this translation:—

*Kabúliyat.*

To the noble (landlord's name).

I (tenant's name) son of inhabitant of village , execute the following kabúliyat:—

In the district subdivision tháná within the confines of your honour's estate situated in the village I acknowledge to hold a plot of land measuring bighás

in extent as specified below, and to be responsible for the payment of an *annual* rent of rupees in the instalments specified below. For the privilege of cultivating (this land) during the period specified below I, of my own free will, execute this kabúliyat and agree to perform the undermentioned stipulations except those that have been excepted. To this I shall not object. If I do, my objection shall not be admitted.

Duration (or term) of kabúliyat.

*Conditions.*

(1) I will pay each month interest on arrears at the rate of per cent.
(2) I will maintain the boundaries.
(3) I shall enjoy the produce of the trees.
(4) I will not fell trees without permission.
(5) I will not alter the (character of the) land by excavation or otherwise.
(6) The landlord shall be at liberty to measure and charge rent at current rates for excess lands.
(7) Should the measurement show that I hold less land (than specified in this kabúliyat), I shall be entitled to abatement of rent.
(8) The landlord shall not be at liberty to measure during the currency of the lease.
(9) I shall not dispose of or mortgage my jote.
(10) The jote, on my decease, shall descend to my heirs.
(11) On my death, the landlord shall dispose of the jote or make any other arrangement he pleases.'

"It will be observed that Nos. 6 and 8, and Nos. 10 and 11, are mutually contradictory.

"It will be observed, further, that the rate of interest is left to be filled up as might be agreed in each case; that all payments are to be *annual;* and that it is only from month to month that interest on arrears is stipulated for. I understood from my hon'ble friend that in the Government form of pattá the Government declined to entertain applications for remission on the ground of diluvion. The seventh clause of the Government kabúliyat expressly contains a stipulation for abatement of rent where measurement shows a diminution in the area of the land held, and the tenth is in direct contradiction to the contents of my hon'ble friend's kabúliyat. But I have to go further. This is the form of kabúliyat which Sir Richard Temple introduced in 1876, with the view of securing wider registration; but the success of the measure was not very great, and I understand that, in 1878, this form of kabúliyat was entirely abandoned. The form of kabúliyat for rights in Government and wards' estates which was adopted in 1876 remained in force for two years. It was superseded in 1878 by two forms which were then sanctioned by the Board of Revenue; these forms are quite unexceptionable and are in force now. They correspond in no sense with the document adduced in the case which has given rise to this discussion, and if any one wishes to study them, or better, if any zamíndár wishes to see what a model form of kabúliyat should be, he will find it recorded under Nos. 23 and 24 at page 58 of the Board of Revenue's manual. It is impossible for anything to differ more widely from the indefensible document which was brought forward yesterday; and I may add that within the last few weeks we have issued, through the Board of Revenue, strict orders showing that the right of occupancy is to be strongly protected, and, with the permission of the Council, I will read the circular. It runs thus:—

'I am to remind you that it is no longer open to a manager or to local officers to discuss the policy of allowing raiyats to acquire a right of occupancy in their holdings. The policy has been fully adopted by the legislature and the Government that it is good that raiyats should have the right of occupancy. If the raiyats of the estate do not understand the right of occupancy used in its legal sense, the sooner they cause it to be explained to them the better. The Board expect that the officers engaged in the present settlement proceedings will take the opportunity to dispel their ignorance of legal rights, and they desire that you will take care that no misunderstanding on this subject is allowed to exist among managers of estates in your division. It should be made a distinct instruction to them that there is to be no attempt to discourage the growth of legal occupancy-rights; and that, when they have accrued, they must be fully recognised in all zamíndárí papers.'

"The only other question I have to refer to is the question to which my hon'ble friend Mr. Kristodás Pál has referred as to the management of Government estates. Here I cannot appear as the defender of all that has been done in the past. I believe myself that there is a great deal in our khás mahál administration which is capable of improvement, and, therefore, I have interested myself in the subject and have called for a special report from the Board of Revenue on the subject. Indeed, in the case of one large Government estate, to the charge of which I have recently appointed a Covenanted Civilian, I am trying, by way of experiment, to learn whether we cannot introduce a better system of management, by spending more money in the opening out of more roads in the backward parts of the estate, and by inducing immigration to promote the extension of cultivation. The subject has received my personal and careful attention. But my friend went on to say that the khás management of Government mahále in Tipperah and Chittagong and Medníipur was so bad as to create a scandal. I am not aware of the particular cases he referred to in Tipperah and Chittagong; but if he will bring them to my notice afterwards, I shall investigate the matter. I am however acquainted with the circumstances of the cases which occurred in Medníipur. They refer to two temporarily settled estates in which the last settlement was made about forty years ago. After regular settlement proceedings, the rents were enhanced in these two estates to the extent of fifty per cent., and the raiyats objected. This happened three or four years ago. Some people have taken exception to the settlement as exorbitant and unjust to the tenants. But, having regard to the long interval since the last settlement, and to the enormous rise in the value of produce in that period, the revenue authorities maintain that the new demand is not unreasonable. The raiyats, however, would not pay at the enhanced rate and, thereupon, the Government proceeded in the matter constitutionally and according to law, and not as has been done by some zamíndárs without any reference to law. The Government sued the raiyats in the Munsif's Court and obtained decrees: appeals were made to the Subordinate Judge's Court and were dismissed. The raiyats again went up from that decision on special appeal to the

High Court, and the order of the Lower Courts was again confirmed. So far it may be assumed that the action of the Government had justice and moderation on its side. I understand that the raiyats in these two parganas spent a lákh of rupees in contesting what seemed a moderate enhancement; and it may be thought that, after the decision of the High Court was given against them, they would have submitted. But that was not the case. We have had to send a special officer to ascertain the circumstances under which the raiyats refuse to pay the rent which is now legally demandable from them, and the matter is still under enquiry. In the meantime, to show the leniency with which these raiyats have been treated by the Government, I may mention that one and a half years' rent of the whole body of the raiyats has been remitted; but not satisfied with this concession, they claimed the remission of three years' rent. So far from a case being made out, of oppression and hardship or abuse of the law, I most positively affirm that our revenue-officers have acted here, not only in strict accordance with the law, but with moderation and indulgence. But the result remains that, even after the enhancement, the rents of these estates were under the prevailing rates of rent paid by neighbouring raiyats. And as regards the recusancy of the raiyats, it is only another argument in favour of giving the Government, as well as the zamíndár, some assistance in realizing the rates of rent which the Courts have finally decreed."

The Hon'ble Sir Steuart Bayley said :—"My Lord, in replying to the objections which have been offered to this Bill in its present stage, I may as well begin by saying that it is my intention only to reply at present to objections offered on the ground of the principles of the Bill, not to points of detail. In the first place, time would not permit, on such a long and elaborate Bill, of my entering into criticism of its details; but, more than that, I wish it to be distinctly understood that, on many points of detail, the provisions of the Bill are only put forward tentatively, in order to elicit criticism, and that we are quite prepared to reconsider and amend them in Committee, on sufficient cause being shown. I may, moreover, say that I came here unprepared to throw a doubt on the intelligence of my audience, by again examining the necessity of the introduction of some such Bill as the present one. I fully endorse every word my hon ble friend Mr. Ilbert said on this score in his opening speech, and if there is any one still unpersuaded of the necessity of legislation by the arguments he has used, neither would he be persuaded though one rose from the dead. Certainly nothing that I can say would convince him. Yet we are told that in Bihár neither landlords nor raiyats want legislation; that in Bengal landlords do indeed want it, but not for these objects; that landlords and raiyats are on most friendly terms; that there is no rack-renting, no eviction, no enhancement; that the zamíndárs have peopled the jungles, dug tanks once upon a time and had made roads; that they subscribe largely to education, to dispensaries and to other charitable objects; that the Bihár zamíndárs gave land free for road making, and behaved well to their raiyats in the famine, for which they received the eulogium of Sir R. Temple. Well, though some of these facts require considerable modification, I am not going to traverse this description of the typical zamíndár. I have to oppose their interests in the interests of a more helpless class; but this line of policy can be justified without vilifying the zamíndárs. I have no doubt they merited Sir Richard Temple's somewhat generous compliments as much as I did myself, or as a good many other officers of Government did. I have no doubt that as a class they are just what their environments make them, and there are many good ones among them. I know that their liberality and usefulness are great, but while I am far from saying they make a bad use of the money they collect from the raiyats, I do wish that the sums thus extracted should be regulated by law and not left to the arbitrary discretion of the zamíndár. No, if the zamíndár is as considerate and merciful as he is said to be by my hon'ble friend, then this Bill can have no terrors for him. The law is a terror to evil-doers, not to them that do well. If they neither enhance the rents of their tenants exorbitantly, nor threaten them with eviction in case of their refusal, the prohibition against such practices cannot affect them; but, unfortunately, all landlords are not of this type, and, certainly, all landlords' agents are not so, and I shall, in the course of my speech, I fear, bring ample evidence that there are landlords who require to be restrained. As I have said, I am not going over the ground which has been already fully occupied in Mr. Ilbert's speech, as to the demand which the landlords themselves made for legislation. I need only refer on this point to the memorandum published as Appendix I to the Bengal Government Report. But to show that the state of things is not quite as Arcadian as has been described, Mr. Thompson has told us that he has a list of no less than 80 petitions addressed by raiyats to the Government of Bengal in the last three years, complaining of acts of oppression on the part of zamíndárs. Most of these petitions are complaints of undue enhancement of rents; others of the exaction of illegal abwábs; others of measurement by an illegal standard; others of dispossession of occupancy-rights. We have been told that there are no evictions in Bengal. Though eviction through the Courts is not frequent and, consequently, statistics are not forthcoming, our police registers tell a very different tale. In one district, a Magistrate (Mr. Edgar) tells me he compiled from these registers a list of no less than 500 such complaints in two years, and the complaints to the Bengal Government of dispossession of occupancy-rights mean the same thing. Eviction in itself is of little value. It is of value as a weapon for enforcing enhancement. I also have a list of applications for the quartering of additional police during the same period, on account of disputes between landlord and tenant. They amount to 16. These applications were all made by the Magistrates; they came from Bákirganj, Jessore, Kalna, Faridpur, Mednípur, Maimansingh, Noakháli, Nadá, Pabná Rajsháhi, Tipperah, and Orissa; they cover a force of 410 constables, besides officers, all applied for for the purpose of keeping the peace between zamíndárs—and in zamíndárs I must include the Government itself—and their raiyats. It will be noticed that

none of these come from Bihár, not, I fear, because there is less oppression in Bihár than in Eastern Bengal,—in fact we know the case is the very reverse of this,—but because the oppression has been so effectual that the raiyats are incapable of resisting, and there is no fear there of disturbance. In one part of the country, we have disputes requiring an armed force to prevent their culminating in disturbances; in another, we have a peasantry too helpless to resist oppression, and in both, I say, there is urgent demand for legislation which shall enable such a state of things to cease.

"The two main objects of the Bill are described to be, in the words of Mr. Ilbert,—

'(1) to give reasonable security to the tenant in the occupation and enjoyment of his land; and
(2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.'

"The objections taken in regard to the manner in which the first of these two objects is dealt with in the Bill group themselves naturally round—

(1) the extension of the right of occupancy;
(2) the limitations to enhancement;
(3) the transferability of the raiyatí tenures;
(4) the overriding of contract.

"The objections taken to the extension of the right of occupancy are, mainly, that this extension goes beyond what was the customary right at the time of the Permanent Settlement; that it certainly goes beyond what Act X of 1859 defined to be the right; that it will, taken in connexion with the power to transfer, do no good to the cultivating classes, while it will do unwarrantable injury to the zamíndár. I am not going at any length into the question of the position of the resident raiyat at the time of the Permanent Settlement. After the admirable exposition of the question which we, or at least some of us, enjoyed yesterday from my hon'ble and learned friend Mr. Evans, this is not necessary. I was in hopes that this controversy was settled, but after what we have heard from the hon'ble gentleman opposite, from Rájá Siva Prasád, as to the indefeasible rights of property conferred on zamíndárs by the Permanent Settlement, I feel bound to touch on the argument. While it is admitted that raiyats who received pattás at the Permanent Settlement (or who otherwise had their rents at the time fixed), and their representatives, had the right of occupancy, by which I mean the right to hold on undisturbed so long as they paid established rates (I am not here referring to the question of enhancement), it is asserted that outside that class, the raiyats had no rights at all, except those which they derived from the zamíndár. It is singular that this controversy should still be deemed an open one. Only the other day, in studying the literature connected with this subject, I came across a paper published as an Appendix to the Select Committee's Report of 1832, written by Mr. Campbell of the Madras Civil Service. He says, after noting that the partial extension of the permanent zamíndárí system to Madras had not in that Presidency succeeded in materially impairing the prescriptive rights of the tenants, that 'in Bengal, on the contrary, though a mass of evidence exists in support of similar right on the part of the cultivators in 1793, and though some of the oldest servants of the Company, such as Mr. Harington, Mr. Colebrooke, with many of their most distinguished civil officers examined before the Committee, have most strenuously advocated them, there are others of great experience who declare that the raiyats in Bengal have no rights and never had any.' This was published fifty years ago. The description of the controversy might equally be applied at the present day.

"But can anyone who has read the papers circulated with this Bill resist the light thrown upon the question in those papers, especially by the annexures to the Report of the Rent Commission, and by the researches of Messrs. Mackenzie and O'Kinealy?

"These gentlemen give in every instance their authorities, and there is an overwhelming balance of testimony in favour of their view, that all resident raiyats once admitted to the village, whether before or after the Permanent Settlement, had a right of occupancy in their lands so long as they continued to pay the established rent, and they had a right to have that rent fixed by the ruling power. The position of the raiyats and zamíndárs after the Permanent Settlement is clearly declared in Regulation VIII of 1793, sections 7 and 8, and Regulation VII of 1822, section 4. Their rights were the old customary rights, except where changed by the Regulation. That is, in addition to the old customs, they were bound to confine their contracts to the terms of the Regulations (section 65, Regulation VIII of 1793). They must frame their leases conformably to the circumstances of the estate and submit them for the Collector's sanction; none else were valid (section 58, Regulation VIII of 1793); they could make no lease for more than ten years, could not exact more than the customary rate of rent (section 7, Regulation IV of 1794), or for doing so were liable to a penalty of three times the amount (Regulation VIII of 1793, section 55). The raiyats, on the other hand, had a right to perpetual renewal at the customary rate (Regulation XLIV of 1793) wherever and whenever they were once let in as cultivators of the village. The only power to eject was that afforded by the sale law of 1822 to auction-purchasers in regard to unprotected tenancies, and this, though renewed in 1845, was taken away by Act X of 1859. They quote, as their authorities, Sir John Shore, Lord Cornwallis, Mr. Colebrooke, the Government letter of 7th October, 1815, Mr. Sisson's letter of 2nd April, 1815, Lord Moira, Mr. Holt Mackenzie's Evidence of 1832, and Mr. Harington's *passim*, and they show that, whatever the practical result of Regulation V of 1812, which was admittedly a new departure, the intention, as shown by the preamble and by the Sadr Court's circular of 18 6, was expressly to maintain existing restrictions as to the rights of raiyats to a renewal of their pattás at the established rates. They also show that these views were in the main held by the great majority of the Judges on the

Bengal rent case, especially by Messrs. Trevor, Campbell, Norman, Kemp, Morgan and Seton-Karr.

"I feel confident that no one who has carefully studied their notes, and certainly no one who, as I have done, has gone back and studied the original references themselves, can doubt that they have made good their propositions. I will content myself with showing that this view has been also consistently maintained by the Court of Directors and by the Secretary of State. One hon'ble gentleman yesterday expressed a wish that he had been born in Lord Cornwallis's time. I was almost tempted to re-echo the wish, for I am sure he would have had a much more correct appreciation of what the Permanent Settlement did and did not do for the zamíndárs than that which he put forward yesterday. The first quotation I will read is from the Court's letter of the 19th September, 1792, the early part of which has already been quoted by Major Baring. It runs thus:—

'Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory; and, in point of fact, the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.'

"My next quotation is from the Government letter addressed to the Court of Directors on 7th October, 1815—

'We consider it as a principle equally applicable to all the Provinces immediately dependent on this Presidency, and we believe we might safely add to the whole of India, that the resident raiyats*

* (1815.)

(and recollect that Sir J. Shore defined a *resident* cultivator as anyone who cultivated the land in the village in which he lived)

*have*, by the Government letter of 1815, an established permanent hereditary right in the soil which they cultivate so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zamíndár, but that it is to be regulated by specific engagements, or, in the absence of such engagements, by the established rates of the parganas or other local divisions.

* * * * *

'With these impressions respecting the rights of the peasantry, such parts of the provisions contained in Regulation XLIV of 1793 and XLVII of 1803 as declare that pattás shall not be granted to raiyats or other persons for a term exceeding ten years, appear to be fundamentally erroneous. The natural and obvious tendency of that rule was to limit and restrict those rights which the peasant possessed in a much more extended sense by virtue of the constitution of the country itself.'

"In reply to that letter, the Court of Directors, writing on 15th January, 1819, went into the whole question. They began by saying that, 'though the use of the terms 'actual proprietors', 'landed estates' and 'under-tenants', has contributed to impair and, in many cases, to destroy the rights of individuals, yet it is clear that the rights which were actually conferred on the zamíndárs, or which were actually recognised to exist in that class by the enactments of the Permanent Settlement, were not intended to trench upon the rights which were possessed by the raiyats.' They quote Lord Cornwallis's Minute, their own order of 1792, the distinct provisions of Regulations I of 1793 and VIII of 1793, and then ask, how it is 'that our institutions are so imperfectly calculated to afford the raiyats in practice that protection to which on every ground they are so fully entitled, so that it too often happens that the quantum of rent which they pay is regulated neither by specific engagements nor by the established rates of the parganas, but by the arbitrary will of the zamíndárs.' They quote with approval the statement of Mr. Cornish, Judge of the Patna Court of Circuit, to the effect that—

'the raiyats conceive they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done. The zamíndárs, although afraid to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase, and the power of distraiht vested in them by the Regulation soon causes the utter ruin of the resisting raiyat.'

"They then say—

'We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long established rights as it is to maintain the zamíndár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him.'

"They then condemn Regulation V of 1812 as a very '*imperfect corrective*' of the evils which it was intended to remedy, and especially condemn it in reference to the construction put upon it that it gave zamíndárs power to demand from the raiyats any rent they think proper, without regard to the customary rate of assessment in the pargana.

"The discussion goes off into the measures requisite to avoid a repetition of these evils in the temporarily settled Provinces, and finally led to the enactment of Regulation VII of 1822 and to the draft Regulation drawn up by Mr. Harington in 1826. But I have quoted enough to show the opinion arrived at by the Court of Directors in the early part of the century, after a discussion scarcely less exhaustive than that recently accorded to the question of the raiyats' rights in Bengal. Before leaving this part of the question, I will ask you to hear the conclusion come to by the Secretary of State after perusing the discussions of the Bengal Rent Commission. He says:—

'Whatever may have been the exact position, actual or legal, of the bulk of the Bengal raiyats prior to the Permanent Settlement, there can be no doubt, after the exhaustive investigation which the question has now

undergone, that their customary rights at least include the right of occupancy, conditional on the payment of the rate current and established in the locality.'

"To this extent His Lordship authorized us to endeavour to restore the raiyats to their original position, and it is to this aim that those portions of the Bill which deal with the growth and incidence of the occupancy-right is devoted. I have left untouched the argument derived from Regulation II of 1793 and the quotation of the preamble 'that no power will then exist', &c.; because this has already been disposed of by my hon'ble friend Major Baring, but I may point out that in quoting the preamble of Regulation II of 1793 my hon'ble friend opposite, Rai Kristodás Pál, omitted to quote that part which would have upset his view of the complete and absolute proprietary right of the zamíndárs before and after the Permanent Settlement. It said:—

'The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bígha of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury.'

"So much for the Permanent Settlement. The question remains—Are we, as a high authority tells us, unwarrantably extending the right of occupancy as settled and defined by Act X of 1859? In the first place, I may observe that, if the present discussion has brought out nothing else, it has very prominently made manifest the fact that Act X either did nor was intended to settle and define the right of occupancy. It is admitted by the same high authority that the Act of 1859 did not affect the right of raiyats to establish, by custom or otherwise, a permanent title. It only fixed a period of prescription. In other words, it was an additional and not an exclusive enactment. The history of Act X of 1859 is very clearly summarised in the Minute of Mr. Justice Cunningham. He says—

'No one can understand the true position of the several parties to the controversy, who has not studied the original frame and language of that Bill. Its object was, not to codify the law, but to amend one particular branch of it,—that relating to the recovery of rent. At the same time it was thought expedient, as its mover* explained, 'to re-enact in a clear and distinct form the provisions of the existing law connected with rent suits, and sections 3, 4 and 5 accordingly set forth what had been the law since the time of the Permanent Settlement.'

* Mr. Currie, 10th October, 1857.

'Section 3 provided that 'hereditary raiyats' at fixed rates were entitled to pattás at those rates; 'all other raiyats and cultivators' were entitled to pattás *at the rates established in the pargana for similar lands, or, if no such rates could be discovered, at the customary rates for similar lands, in the vicinity.*

'Section 4 provided that 'every resident raiyat and cultivator has a right of occupancy,' except in the cases (1) of *sír*-lands leased for a term, or year by year, and (2) lands sub-let by an occupancy-tenant to a resident cultivator.

'Section 5 reserved express agreements as to rent, clearing leases and right of re-entry, and provided that resident raiyats cultivating lands not previously in their possession, without a pattá, should not acquire a right of occupancy till they had paid rent for three years.

'The Select Committee reported that no alteration in the principles of the Bill was necessary; but they recommended, in the case of raiyats at fixed rents, that twenty years' holding at fixed rates should raise a presumption of having held from the time of the Permanent Settlement; in the case of other raiyats the Committee reported that they were entitled to hold at pargana rates;' that this had been admitted to mean 'customary and fair rents;' that 'khudkásht raiyats were spoken of as possessing rights of occupancy,' and that 'khudkásht' was held synonymous with 'resident;' but that it had been pointed out that 'residence' is not always a condition of occupancy, and it appears that after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with general practice and recognized rights, that a holding of the same land for twelve years should be held to give a right of occupancy. We have followed this precedent.

'This was the origin of the rule that twelve years' continuous holding creates a right of occupancy.

'It was, however, from the twelve years' rule that the most serious consequences to the raiyat's position resulted. This appears to have been adopted, not only without due consideration of its necessary results, but under actual misapprehension of the real purport of the rule which the Select Committee considered themselves to be adopting. The admitted law was that all resident raiyats had rights of occupancy; but then it was found that some non-resident raiyats had such rights, and it was proposed to meet these cases by adopting a rule in force in the North-Western Provinces, that an ousted tenant could, by a summary process, recover possession by showing twelve years' occupation. The effect of converting this rule into a general definition of occupancy-rights was that on the one hand many undoubted occupancy-tenants found their title endangered by not being able to prove twelve years' continuous occupancy, and, on the other, that tenants not otherwise entitled to occupancy-rights were able to claim them whenever they could show residence for the required period. The results were, in the language of the Lieutenant-Governor of the North-Western Provinces, 'wholesale enhancement of rents and ejectment of raiyats who had a customary claim to occupancy.'

"My answer then to the question must be that we have undoubtedly gone behind the letter of Act X; nay, more, we have endeavoured to undo some of the injury which that Act unwittingly brought about, but we have on this point of occupancy-rights carried out, as nearly as circumstances permitted, the intentions which the framers of Act X deliberately and expressly set before themselves. We have not got rid of the twelve years' prescription, though in the opinion of some of us the maintenance of a fixed period of prescription is neither historically correct, nor practically convenient; in fact, as Mr. Cunningham has said, 'you can never have peace between two parties, one of whom will, at a certain period, become entitled to a privilege at the expense of the other'; but we have got rid of the anomaly by which a resident cultivator would be ousted from his prescriptive rights by the mere device of his landlord shifting him from one patch of cultivation to another. We are told that the practice of shifting cultivators is not common in Bengal, but so convenient a device is not likely to be long left a monopoly in the hands of the zamíndárs of Bihár, where it is common, and we are legislating

for Bihár as well as for Bengal. Allow me to quote to you the resolution arrived at on this point by a meeting of landholders in the Shahábád district on the 30th October, 1880. They resolved, with reference to the original proposal to confer modified rights of occupancy on three years' raiyats, that—

'This concession is strongly deprecated. At present land-owners prevent the growth of occupancy-rights by granting leases for five years only, *or by changing* lands, or by managing so that a raiyat shall never hold at the same rent for twelve years.'

"Now, what Mr. Cornish said in 1815, that the raiyats conceive they have a right to hold their land so long as they pay the rent, is equally true of the present day. Mr. MacDonell, writing of Darbhangá, says—

'Illiterate, and in the hands of the zamíndár as far as accounts go, the raiyats cannot prove the status required of them, though the universal sense of the Province believes this status to exist. Our registration offices show that these occupancy or kashtkari rights are now mortgaged; our Civil Court records and our registration offices show that they are sold.'

"Mr. Edgar, writing of Bihár generally, says—

'I hold that the vast majority of raiyats in Bihár have, at the present moment, strong occupancy-rights in the land which they cultivate; that these rights are based, in the first instance, on the living custom of the country, a custom which no Court of law could ignore, if it was properly pleaded before it * * I freely acknowledge that this right has, in many cases, been destroyed by the illegal action of the zamíndár, most of them acting through thíkádárs, whether European or Native; that great sweeps of land, once held by raiyats with rights of occupancy, have been turned into indigo zarats; that lands have been arbitrarily taken from one raiyat and given to another; that holdings have been changed at the pleasure of the zamíndárs.'

"But over three-fourths of the land of the Province, he says unhesitatingly, occupancy-rights are the rule. Are we to allow such rights to be broken by the simple device above alluded to, or by what Mr. McDonnell declares to be equally frequent, 'the manipulation by patwáris of the village jamabandís to prevent the identification of the plot held this year with the plot held five years ago,' or by the custom confessed to, with cynical naïvete, by the Shahábád landholders, in the paper from which I have already quoted, namely, that 'all lands becomes *zarat* (or private land), when taken into the landlord's hand'? No. The evidence throughout these papers is overwhelming that there is a strong and increasing tendency among landlords to break down occupancy-rights by every possible device, and we are bound to do our best to protect these rights; and the provision formulated by the Secretary of State for giving these rights to every cultivator who has held land for twelve years within the same village or estate, is quite the minimum protection that can either be accepted for the rights that have been acquired in the past, or to enable the raiyat to have some fixity of tenure in the future.

"On the economical side of the question I need not detain you long The argument of the opposition on that point is more directed against the tranferability, than against the accrual, of these rights, though I have seen references to Mr. Ross's Minute of 6th March, 1827, arguing that by protecting raiyats you do not make the ground more productive, but only increase the number of mouths deriving subsistence from it. Well, I think, Major Baring has sufficiently answered the point, and you have heard also what the Lieutenant-Governor has said about the condition of the *guzashtadárs* of Bhojpur; but I may also add the following testimony from the Famine Commission to the same effect. They say—

'In the case of these large cultivating classes, security of tenure must have its usual beneficial effect, and, as a rule, the cultivators with occupancy-rights are better off than the tenants-at-will. Whenever enquiry has been made, it has been found that in all matters relating to material prosperity—such as the possession of more cattle, better houses and better clothes—the superiority lies on the side of the occupancy-tenants, and the figures in the preceding paragraphs also show that, as a rule, they hold larger areas of land. Where the sub-division of land among tenants-at-will is extreme, any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind such as can hardly be conceived by a community where a diversity of occupation exists, and where those who cannot find a living on the land are able to betake themselves to other employments. It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the members of the occupancy class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will who, owning no permanent connection with the land, have no incentive to thrift or improvement.'

"This, I think, is the view that all sensible men must take of the benefits given by fixity of tenure, and all the best zamíndárs to whom I have spoken take the same view. I quite believe what the Mahárájá of Darbhangá told us yesterday, that good landlords do not, as a rule, object to a raiyat being secure in his tenure, and it may safely be said that the power of ejectment is valued, mainly, if not entirely, as a means of extorting enhanced rent, and to this desire, having otherwise provided a reasonable means and measure of legitimate enhancement, the Government should, I think, make no concession.

"And this brings me to the question of limitation of enhancements. To those who wish that enhancements should be left to the discretion of the parties,—in other words, that there should be neither restriction of ground, nor limitation in amount of enhancement,—the Bill will certainly not be satisfactory.

"We are told that enhancements do not take place in Bengal. I can only say that the experience gained by Government officers in managing Wards' estates is the reverse of this. I could easily show from a recent resolution of the Board of Revenue that the great difficulty the Government officers have in these estates is to collect rents, because these rents all include illegal abwábs and undue enhancement. Witness Salkhira, with an arrear of 6½ lakhs against a rental of Rs. 3,50 000, and in Kassimbázár and in Chándal in Maldah. But without going further into this question as it exists in Bengal, I do not think anyone can doubt the frequency

of excessive enhancement in Bihár; and in the face of these facts, if we accepted the view of the authors of the Permanent Settlement, that the resident raiyat had a right to hold his land at rates not higher than the pargana rates, the necessity of some limitation is apparent. Whether, before Act X of 1859, the landholders had any legal right to enhance on the ground of increase in the value of produce, has been shown to be exceedingly doubtful; but any way the right to enhance on certain grounds was allowed by that Act, and the present Bill, so far as the grounds on which enhancement can be demanded, makes no material alteration in them; we have, it is true, not confined ourselves to the rule of proportion which the majority of the Judges of the High Court accepted as the best means of giving effect to the intention of Act X, but we have maintained that rule as a maximum. The real innovation which we have introduced is the limitation we have applied to the enhancement of money rents. These are, in regard to occupancy-raiyats, that the enhancement shall not do more than double the old rent (this does not refer to area, but to rates); that the enhanced rate shall not exceed twenty per cent. of the gross produce; that the rent shall not be enhanced a second time within ten years. To all those provisions objections have been taken. It is urged that, if a raiyat's land can bear a rent enhanced more than one hundred per cent., there can be no reason why the landlord should not get it. There *is* a very good reason—a reason which is constantly preached and very generally (I wish I could say universally) practised in framing revenue rates in temporarily settled provinces,—and that is that a great and sudden increase to this extent means such a great and sudden diminution in the cultivator's income, as must, in most cases, destroy his means of proper cultivation; in other words, must injure the agricultural prosperity of the country.

"Then, in regard to the other, and probably the very much more important, limitation of the enhanced rent to a fixed proportion of the gross produce of the soil, there are very numerous objections taken. Some of these, I confess, are not quite easy to answer. Mr. Ilbert explained last week that the limit of twenty per cent. had been substituted at the last moment for twenty-five per cent. at the request of the Government of Bengal. This exact percentage is for the moment tentative. I can only say that twenty-five per cent., besides being the *reba* of the Muhammadan administration, was the percentage suggested by the British Indian Association in 1875, and that twenty per cent. was the limit suggested by the landholders of Eastern Bengal, and in that part of the country the landholders at present, as a rule, get nothing like that proportion. But the objection to the special fraction taken as the percentage is of less importance than the objection, on principle, to taking a percentage of the gross produce at all, as a test of the rent rate. It is obvious that, in fixing a rent rate for special fields, not the gross produce, but the nett produce should be the test. Expenses of production vary enormously, and, whereas on some soils twenty per cent. of the gross produce may be the true economic rent, in others it may be really a beneficial rent, and in others, again, it may be a rack-rent or more, trenching on the actual labour-wage of the cultivator. This objection, which would be fatal to a scheme for actually deciding the rent of each holding by this standard, and which is fatal in my opinion to the proposal made yesterday, that a fixed proportion of the gross revenue should be substituted for the table-of-rates, is not of the same force when the percentage is taken, not as a standard, but as the maximum. Our scheme starts from existing rents, which shall, in the absence of evidence to the contrary, be taken as fair and equitable, and the twenty per cent. maximum is itself balanced by other limitations, such as doubling the present rent, and by the proportion-rule in those cases where increase of prices is the ground of enhancement. There is yet another ground of objection, namely, that the use of this test will work very unequally in different parts of the country: whereas, in some parts of the country, money rents expressed in staple produce do not at present exceed ten to fifteen per cent. of the gross produce, we know that in other parts of the country they rise as high as thirty per cent. In fact, we were told yesterday, what I hope is only true of produce and not of money rents, that in Bihár they range from forty to sixty per cent. of the gross produce. Well, we do not propose to bring down existing rents anywhere by the application of this standard,—a decision quite in accordance with the existing law on the subject, and with the distinctly declared intention of Sir A. Eden, but we do definitely say that there shall be some security that the rents of occupancy-raiyats should not be enhanced beyond a point which shall leave them no margin whatever, and the percentage test is the proposal which has found most favour as the means for giving effect to this decision.

"If I am told that no such minimum at all is required, the description of the Bihár peasantry as given in the Hon'ble Major Baring's speech is surely a sufficient answer. There we have the fact stated that over a great part of the country rents have been doubled in sixteen years. But, as Mr. Ilbert said, an ounce of fact is worth a ton of theory. The hon'ble gentleman yesterday quoted from a paper by Mr. Finucane, who has been deputed to prepare experimental tables-of-rates on the Nurhan Property in South Tirhút. Allow me to refer also to the same paper. He says:—

'Take the instance of village Jaezootee. The present proprietor of this village, Bábú Nandan Lál, has inherited it from his adoptive father, Bábú Bri Behari Lál, who was in possession when the Permanent Settlement of the mahál was made in 1247 F. S. (1840 A. D.). The area then under cultivation was 196 bighás, the then gross rental, which was taken as the basis of settlement, being Rs. 151, and the average all-round rate being Re. 1-7 per bighá. The Government revenue was fixed on the basis of half assets: and, as the settlement records, which I have examined, show, the very moderate amount thus fixed was objected to by the present proprietor's father on the ground that the rental of Rs. 151 taken as the amount of assets, was more than the [illegible] The objection was, however, overruled, and the settlement was accepted in 1247 F. S.

'(a.) After the lapse of forty-three years, what do we find in this village? We find that the area under cultivation has decreased by four bíghás, while the rental is now* almost exactly six times the rental of 1247 F.S. (1842 A. D.). In other words, the average rates all roun have been enhanced by *five hundred per cent. in forty-three years*, the i in prices during the same period being at most *seventy-three per cent.* There is reason to believe that the state of things existing in Bábú Nandan Lál's property is not very materially different from what exists in other properties in the Darbhangá, Muzafferpur and other North Gangetic districts of Bihár.'

* Area under cultivation in 1847, 106 bíghás. Area now under cultivation shown in the jumabandí, 102 bíghás. Rental in 1237 F.S., Rs. 151. Present rental, Rs. 905.

"And how is this brought about? He gives the history of recent enhancements in various villages, of which I will read only the three first,† beginning with Tubka Khás.

† Tubka Khás, Tubka Maghribi, Mahomedpur Sunhara.

'TUBKA KHÁS.

'2. *Past history of the village.*—The jeth raiyats say that Máhtáb Singh was thíkádár in the time of Ram Narain Singh, who was the present minor's grandfather. He took half an anna karcha (*abwáb*) on the old rates. He was succeeded by Bechuklal Misser, thíkádár, who incorporated with the rent the half anna taken as karcha by his predecessor, and then realized an anna in the rupee as karcha on his own account. Bechuklal's lease having been renewed, he similarly again incorporated previous karcha with the rent and levied an anna per rupee as karcha in addition. On the expiration of Bechuklal Misser's lease, the village was leased to the Dalsing Serai Factory in 1270 F.S. (1863 A. D.). The first lease to the factory was for seven years. This lease was renewed for a further period of seven years, and was again renewed for a term of nine years, which term will not expire before 1292 F. S. (1885 A.D.).

'The factory enhanced the rates by one and a half-annas in the rupee during the currency of its first lease in 1275 F.S. (1868 A.D.), and again enhanced the rents by half an anna in the rupee last year. This so-called enhancement consisted in simply ordering the patwárí to enter the amount as a demand in the village papers against each raiyat.

'TUBKA MAGHRIBI.

'3. *Past history.*—The mauza was leased to Bekram Lal from 1250 to 1256 F.S. (1843 to 1849 A.D.). The rates prevailing in this period are not known. From 1257 to 1274 F.S. (1850 to 1867 A.D.) it was leased to Máhtáb Singh. He raised the rates by four annas per bíghá in 1257 F.S. (1850 A.D.).

'From 1275 to 1283 F.S. (1868 to 1876), the village was leased to Dalsing Serai Factory. This lease was renewed for a further period of nine years, which will expire in 1292 F. S. (1885 A.D.).

'The factory raised the rates by one and a quarter annas in the rupee in 1275 F.S. (1868 A.D.). In 1284 F.S. (1877 A.D.) part of the village was again given in lease to the Dalsing Serai Factory and the rest was leased to Tirguman Misser and Medini Thákur, who are themselves raiyats.

'The factory has, during the currency of its last lease, demanded an enhancement of a half anna in the rupee, and entered this demand in the jamabandí.

'MAHOMEDPUR SUNHARA.

'5. *Past history.*—This village was leased to Dalsing Serai Factory for three years, 1267 to 1269 F.S. (1860 to 1862 A.D.), at Rs. 850. The jeth raiyats say that the rates then were from Rs. 2-8 to 8 annas.

'From 1270 F.S. to 1276 F.S. (1863 to 3869 A.D.), it was leased to Behari Raout at a jama of Rs. 1,151. During this period the thíkádár raised the jeth raiyats' rates by eight annas per bíghá in 1275 F.S. (1868 A.D.), and the raiyats' rates by four annas.

'From 1277 to 1285 F.S. (1870 to 1878 A.D.), the lease to Behari Raout was renewed for nine years, at a jama of Rs. 1,600. During the currency of this lease, the thíkádár again raised the jeth raiyats' rate eight annas and the raiyats' rates twelve annas per bíghá. In 1285 F.S. (1878 A.D.), finding he could not realize rent at the above rates, Behari Raout reduced them by two annas and three pies per bíghá. From 1286 to 1292F.S. (1879 to 1885 A.D.), the village was again leased to Behari Raout at Rs. 1,900. He has this year relinquished the lease, being apparently unable to realize his enhanced rents. His relinquishment has been accepted. The present jama, inclusive of Tola Jagarnathpore, is Rs. 2,889. It thus appears that the reserved rental payable by the thíkádár to the proprietor has been more than doubled in the course of twenty years. Further, excluding Tola Jagarnathpore, for which the materials for comparison are not available, it appears, as already noted, that the mufassal jama of the remaining portion of this mauza was Rs. 1,648 in 1275 F.S. (1868 A.D.), while in 1279 F.S. (1872 A.D.), it was raised to Rs. 2,600, and was reduced in 1285 F.S. (1878 A.D.) to Rs. 2,435; in other words, an increase of fifty per cent. was made in the gross rental in the course of the past fifteen years, the cultivated area remaining the same, or rather having decreased by two bíghás.'

"And this is the conclusion he comes to as to the average enhancements in this part of the country:—

'That, while the average rise in prices of staple crops for the past forty-five years have been only seventy-three per cent., the increase in rent rates in these villages has been respectively one hundred and eighty-eight and one hundred and sixty-four per cent.

'That, as regards all the villages in this tract appertaining to the Narhan Estate, there has been an average increase on rates of one hundred and thirty-six per cent. during the past forty-five years, the rise in prices or staple products during the same period being only seventy-three per cent.'

"Recollect these are increases on rent *rates*. The actual increase in the rental, allowing for increased cultivation, is much greater. In the two villages for which data of comparison are available, he shows that in one, while cultivation has extended by forty-seven per cent. in the last half century, the rental has increased by three hundred and twenty-one per cent. In the other, where cultivation has increased by thirty-nine per cent., the rental has increased by two hundred and sixty-nine per cent.

"I will give one more instance from another part of the country. Two years ago, Mr. Edgar had occasion to make an inquiry of a similar nature, but for a different object, in the west of the Champáran District. This is what he says in his report:—

'Tuppeh Dohosoha was settled in perpetuity in 1850. The area of the five mahále at the time of settlement was ascertained to be 15,888 bíghás, of which 9,690 bíghás were cultivated or temporarily fallow. The rental was then calculated to be Rs. 17,342, of which one-half, or 8,671, was fixed as the Government demand. After the conclusion of the settlement, the Bábú seems to have begun enhancing the rents, and the process was carried on so effectually through thíkádárs, that in the road-cess returns of 1873-74, the rental of the five mahále was shown as Rs. 86,175, that is, five times the settlement rental and ten times the Governme[illegible] vated area at that time had arisen to 10,827 bíghás.'

"In other words, in less than a quarter of a century the rental had been increased to five-hundred per cent.; the cultivated area had increased by about eleven per cent. The same report says that there was no real change in the condition of the land between those years, and the same means of irrigation as existed in 1872 had been in existence at the time of settlement. We have been told that similar enhancements have been made in Government estates in Chittagong, Chutiá Nágpur, &c. I am informed that in regard to Chittagong this is a mistake. The rent rates of the raiyats have been actually reduced, though owing to increase of area the *revenue* assessed upon the taluqdárs or contractors has been increased. The Chutiá Nágpur increased rates, I am informed, have not as yet been sanctioned, but I am not here to defend the system of management in Government estates. It has, doubtless, been bad in the past, though since Sir George Campbell's time not nearly so bad as has been stated. Anyway, in regard to enhancements, the raiyats of Government estates will have the same protection as other raiyats, and what I hope I have succeeded in showing is that, if the occupancy-right is to be of any value at all, it must be protected by some limitation of the maximum amount of enhancement. With the method of enhancement and the table of rates I shall deal at a later period of my reply.

"Turning now to the question of the transferability of occupancy-rights, we are told that this is an innovation which will ruin the landlord while it will do no good at all to the cultivator. In the first place, as the Commission have shown, the transferability of occupancy-rights is in most parts of the country an absolute fact. It is stated then that the registers of the Courts show it to be so in every district, save Sáran and Champáran. Mr. MacDonnell, in a paragraph which I have already quoted, says the same. His testimony, it is true, refers to Bihár. Let me quote then from Bábú Parbati Rai, on special duty in Murshidábád. He says:—

Transfer of occupancy-rights prevailing custom in the selected tract.

'Another circumstance brought to light in the course of the present enquiry also deserves mention in this report. It is often alleged on behalf of the zamíndár that the proposal to make occupancy-rights transferable is an innovation. But without going to discuss what the custom in other places is, I beg to state that the custom of buying and selling *jotes* is here very general, and that the zamíndárs themselves also put up such *jotes* for sale at execution of rent decree. Bábú Bepin Behárí Mookerjea, Munsif of Kandi, to whose kind assistance I am greatly indebted for several things in connection with the present enquiry, tells me that it is seldom that the zamíndárs object in Court to the transfer of jotes by raiyats. I have, in paragraph 6 of this report, spoken of raiyats having more than one *jote* in their possession. The jamawásil papers of Gopináthpur show that this custom of buying and selling *jotes* has been very general in the pargana. But though custom is thus in favour of the raiyat, a legal enactment declaring its validity will, no doubt, be productive of very great advantage, as it will prevent the litigation that occasionally crops up at present. The fear that is generally entertained that the effect of making the right of occupancy transferable will be that all such *jotes* would gradually pass into the hands of the money-lenders is, so far at least as this part of the country is concerned, quite unfounded. On the other hand, I find as a fact that all old *jotes* which have changed hands are still in the possession of cultivating raiyats.'

"I have a good deal of evidence to show that so strong is the belief in the inherent right of the actual cultivator to a possessory status in the soil, that even korfa or sub-tenants' holdings are frequently brought to sale in execution of a decree. I have by me a statement from a single Munsifí in Central Bengal, showing that in the last six years no less than 40 of these holdings have been sold in execution, with a rental value varying from Rs. 38 to a few annas, and bought in for substantial sums, in many cases equal to ten, twelve, and even fifteen times the rental. Moreover, there is ample testimony to the effect that the tendency to recognise occupancy-tenures as transferable is increasing, and the real question was whether the facts, as they stand, were to be ignored or recognised. Mr. Field points out that—

'Alienability is in every country, sooner or later, annexed to everything that is made the subject of property, and that here, in Bengal, this tendency has spontaneously shown itself in a very marked manner in respect of these very holdings.'

"It is also clear that transferability is the only alternative to unlimited sub-letting, a practice which we cannot, in face of universal custom, forbid, but which we should be very glad to discourage. Nor can it be really doubted, except by those who look upon human nature in Bengal as guided by quite other motives than those which influence human nature elsewhere, that the desire to acquire land can only have free play when there is a power to transfer, and that in the end the capacity for saving must thus be stimulated. But if, as I have shown, occupancy-rights are every day, and all over the country, put up for sale, surely the legal recognition of this fact gives the landlord the best security for, and the best means of recovering, his rent. The power to transfer gives a value to the right of occupancy which is always available as a means of enforcing payment to the landlord: and though it opens up undoubtedly some room for letting in hostile or objectionable tenants, we have done our best to guard against this by giving the landlord the right of pre-emption at a fair rate, to be fixed, if necessary, by the Court. And let me here point out that the right of pre-emption is not the dead loss to the landlord that has been represented. If the right of occupancy is of any value, it will not be of less value to the incomer than to the outgoer. In other words, the practical operation will be, that the landlord will recover the price he has paid in the shape of a bonus or premium from the incoming tenant whom he prefers to the private purchaser. Mr. Field, in discussing the argument in favour of transferability from facility of execution of decree, says:—

'The strongest point of the complaints urged against the proposed rent-law procedure is concerned, not with the delay in obtaining a decree, but with the delay and difficulty in getting the decree executed once it has been obtained. The experience of the Courts entirely corroborates this. The average raiyat is too poor for process against [illegible] to be productive of much result. His cattle are easily got out of the way, or, if attached, [illegible] of false claims by third parties. He seldom or never possesses immoveable property. To

take him on body warrant is merely to add to costs, the chance of realizing which is thereby diminished. If the raiyat's holding were saleable in execution, and would fetch at least sufficient to satisfy the decree and costs, the landlord's execution difficulties would at once disappear.

"We have, accordingly, made the occupancy-right saleable in execution of a decree, as well as transferable and heritable, but we have not made it saleable by the landlord summarily and without decree. This was proposed tentatively as a privilege which might be granted to those exceptional landlords who keep their books and accounts in such a way as to satisfy the Board of Revenue, but it became obvious on consideration that such a privilege must either be accorded to all landlords or to none; and it must be admitted that, in the present state of affairs, neither are the landlord's accounts so accurate and trustworthy, as a rule, as to make it safe to bring the occupancy-right to sale on their *ex-parte* evidence without hearing the raiyat, nor is he in such a position (as the patni holder generally is) as to be able to save himself from injustice, or to obtain redress for it afterwards, under the *patni* procedure. Whether the right of occupancy thus made transferable will remain for many generations in the hands of the same class as now possess it, is a subject on which many persons are disposed to prophesy. I don't know, and, therefore, I won't prophesy; but certainly no arguments which have hitherto been brought forward have convinced me that this cause *alone* will bring about any great revolution in the position of the occupiers of the soil. In the meantime we shall, I think, with fixity of tenure, fair rents, and the power to transfer, have given to the present generation some security for enabling them to maintain their position as cultivators, to do justice to the soil and to be able to resist the pressure of one or two bad seasons; and, in doing this, I verily believe we are really doing the zamíndár more good than if he were left the absolute master of an impoverished, hopeless and therefore thriftless, tenantry.

"I come now to another point to which very great objection is taken, namely, the overriding of contracts, or rather the provisions preventing a raiyat from contracting himself out of his status. We cannot of course prevent a raiyat making what contract he likes, nor can we prevent his adhering to it, only we say that in certain cases the Court will not give effect to such contracts.

"Mr. Ilbert dealt with the matter in his opening speech, and explained the general considerations which led the Commission, the Government of Bengal and the Government of India to decide that this provision was absolutely necessary. We do provide for moderate enchancements being arranged by private contract, because we do not wish to force all such cases into Courts; but we do not allow any force to contracts which would deprive the raiyat of his occupancy status and make him liable to arbitrary ejectment or arbitrary enhancement. Mr. Ilbert read out a specimen of the kind of document by which, he said, we could not allow the provisions of our legislation to be overridden. I may mention that this was not a single or a solitary document. In the case in which this document was put in, I am informed that the zamíndár's agent urged in its behalf that 1,000 or 1,200 raiyats had given similar *kabúlyats*, and I wish to draw attention to the fact that these details overriding the law are only entered in the *kabúliyat* which remains with the zamíndár. They are not entered in the counter-part pattá which remains with the raiyats. Allow me to offer a few more reasons to the same effect as Mr. Ilbert's pattá. One of the causes of the Pabná riots was the endeavour on the part of the landlords to force from the raiyats *kabúliyats* which, besides incorporating illegal *abwábs* in the rents, provided for the landlord changing arbitrarily the legal standard of measurement, and for his ejecting the raiyat in case of the latter having the misfortune to quarrel with him. Is it possible for us, where the pressure of population on the land is so close, where no other occupation is available, where a raiyat must cultivate or starve, where there is no sort of equality in wealth, or intelligence, or position,—is it possible, I say, for us to allow our Courts to treat such documents, made in direct contravention of the law, as contracts made on equal terms between the parties? Then look at the quotation I have read already from the proceedings of the landholders' meeting held at Arrah. At present, they say, land-owners prevent the growth of occupancy-rights by granting leases for five years, or by changing lands, or by changing the assessment. And how is the assessment changed? Mr. Finucane's report has shown us. One year one anna is added to the rupee of rent as 'kharcha', an illegal *abwáb*. The next year that is incorporated in the rent; after a few years' rest another kharcha of two annas is added, and that is similarly incorporated, or in some cases even this process is not gone through. 'This so-called enchancement consisted simply in ordering the patwari to enter the amount as a demand in the village papers against each raiyat.'

"The hon'ble gentleman opposite endeavoured to show that the Government had adopted or permitted equally oppressive contracts. We have heard the Lieutenant-Governor's reply to this, and it is clear that the hon'ble gentleman mistook altogether the nature of some of these forms, and that the pattá which Government allowed to be sold for convenience sake at registration offices, was by no means so oppressive as he would have us believe. A gentleman once undertook to compile a dictionary, and he had in the course of it to explain the word 'crab'. He described it as a red fish that walks backward. Fortunately, he showed his description to a scientific friend before publishing it. His friend said it was excellent, admirable, perfect; only, unfortunately, the crab was not a fish, it was not red, and it did not walk backwards. Similarly, the Government pattá did not, as the hon'ble gentleman opposite seemed to suppose, provide either for preventing the accrual of occupancy-rights, or for ejectment, or for oppressive interest. But, even if he had made out his case, I should still hold that it would be an argument rather for than against overriding of contract. As Mr. Evans pointed out yesterday, if these things are done in opposition to the well-known principles and wishes of the Government

by their own officers, what will not be done by the unsupervised ámlá of zamíndárs? If these things are done in the green tree, what will be done in the dry?

"I will show you what will be done by reference to another *kabúliyat*, appertaining to the estate of one of the most enlightened landholders in the country, but which positively bristles with provisions for evading or nullyfying the law, and this is the point I wish to enforce—not that such contracts are oppressive, but that they are a deliberate attempt to override the law.

"It is to this effect:—

'I, *A. B.*, by profession a *jotedar*, do execute this kabúliyat in respect of a temporary *jote jama*. I held a temporary *jote* comprising 109 bíghás, 19¾ cottas of land, at a *talab jama* of Rs. 167-12-11,* inclusive of *Battá* and *Iswar Britti*, or charges for religious expenses. The term of the aforesaid *jote* having expired, I applied to obtain the land under a fresh settlement. According to my application, you have inducted me as a temporary† raiyat for a term of five years, extending from the year 1287 to 1292, on following terms, into the aforesaid *jami jama*, as per boundaries given below, measuring 109 *bighás*, at a rental of Rs. 182, minus Rs. 12-5-10, kept apart as *hajut*; that is, at a rental of Rs. 170-4, added to Rs. 7-15-14, the amount of *Batta* and *Iswar Britti*, at the rate of 3 pie per rupee according to the custom of the pargana—in all at a total rental of Rs. 178-3-17-1 cowri. I engage myself to hold the land on payment of the rent fixed, year by year, according to the *kists* specified below, and by keeping intact the borders and boundaries of the land, as they have been since before. I shall not make any plea of payment of rent without producing printed rent-receipts. Should I make any such plea, *it would not be admissible*. Should I fail to pay rent according to the *kists* fixed, I must pay interest at the rate of five per cent. per mensem. In case I do not pay rent at the proper time, you shall be competent to resort to legal means, and realize the same with interest, costs and damages, by bringing a suit; and I shall pay the same without any objection. It is further stipulated that should the rent due by me fall into arrear at the end of the year, you shall be competent to eject me from the *jote jama* and bring it under *your khás* or direct possession *without the help of the Court*; and none of the terms herein stipulated shall be sufficient to prevent you from doing so; that I shall not be competent to *relinquish* the *jote* as long as the term fixed herein does not expire; that in case I do relinquish the *jote* before the term expires, I shall have to pay rent for the entire period, and then relinquish the *jote*; that whenever, within the term specified herein, you may be pleased to have the land measured, I shall cause the measurement to be made, and shall, without any objection, pay rent for the quantity of excess of land over and above the rent already fixed, according to the rate of rent for the different sorts of land found to be in excess; that in case the land be found by measurement to be less in quantity, I shall be entitled to an abatement of rent, according to the rate aforesaid; that I shall not be competent to make any objection regarding inundation, drought or any objection as to the land being *patit*, or waste, or covered with sand, or occupied by *kháls* and so forth; nor shall I be competent to claim abatement of rent within the term fixed herein; that I shall not be competent to let out the land to anybody under a *durjote*, or to transfer it in any way; that in case I do let out the land, or transfer it, you shall be at liberty to take at once *khás* possession of the land herein mentioned; that after the expiration of the term fixed, I shall not retain any concern whatever with the land; that you shall then be competent to resettle the land with me, or to let it out to anybody as you may please; that whenever you should find it necessary to take any portion of the land into your *khás* possession, I shall give up that portion without any objection, and get abatement of rent; and that I shall pay separately the new cess already imposed by Government, as well as that which it may impose hereafter. On these conditions, I execute this *kabúliyat* for the temporary *jote*. Dated the 1287.'

* These are abwábs, and to avoid the penalty imposed by section 11, Act VIII of 1869, they have been included in the rent.

† To destroy any claim to be an occupancy-ráiyat.

If a raiyat is now ejected, except under an order of Court, he has a possessory action under section 9 of the Specific Relief Act. This is to get rid of the Act.

This is to get rid of section 20, Act VIII of 1869,—allowing a tenant to relinquish.

To destroy right of occupancy accruing he had already held it previously.

By sections 52 and 55 of the Permanent Settlement, the landlord enforcing this would be liable to pay three times the amount, and by section 11 of Act VIII of 1869 (B. C.), he is liable to pay twice the amount.

"Can any one say that, in the face of such endeavours as these to override the law by means of contract, the legislature has any choice but to maintain the law in spite of the so-called contracts.

"The objections with which I have been dealing hitherto apply mainly to the provisions of the Bill concerning the occupancy-tenant; but we have heard some very strong objections to the protection given to the non-occupancy, or, as the Bill calls them, ordinary, raiyats. Under existing law, raiyats not having a right of occupancy are entitled to pattás at such rates as may be agreed upon between them and the persons to whom the rent is payable. The term of such pattás is exclusively at the discretion of the landlord, and such a raiyat cannot against the will of his landlord, retain possession of land in which he has not a right of occupancy; but, if he has entered into possession otherwise than for a specific term, or, having entered for a term, has held over with the consent of his landlord, express or implied, he cannot be ejected without service upon him of a reasonable notice to quit. His rent can only be enhanced after service upon him of a notice of enhancement, served by order of the Collector. If, after such a notice has been served upon him, such raiyat elect to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent therefor. (I am taking this statement of the law from Mr. Field's Digest). The alterations which the Bill proposes to make in the law are these. Subject to the general maximum, we leave the rate of rent to be fixed by contract; we leave the raiyat subject to enhancement without a suit, but we provide that, if in consequence of his refusal to accept the enhancement the landlord wishes to eject him, he shall pay him compensation for disturbance. The compensation to be made will be in proportion to the enhancement demanded, so that, if the enhancement is moderate, the raiyat will probably prefer to pay it; if it is excessive, the landlord will have to pay for ejecting him. The object is two-fold—to keep the landlord to reasonable enhancement, and to prevent his making use of his power to enhance as a means for ousting the raiyat so as to prevent his acquiring a right of occupancy. I was quite prepared for strong opposition on this point. It is in principle a return to the modified rights of occupancy which the Commission proposed to give to the three years' tenants: in other words, it aims at giving some security of tenure under which occupancy-rights can grow up to all cultivators. It is admittedly an innovation or experiment which has never been tried in India, and at first sight is open to the charge

brought against it of being an invasion of the landlord's rights. Now, it is pointed out in Mr. Ilbert's speech that a high authority has computed that 90 per cent. of the raiyats of Bengal have occupancy rights. The Bihár Commission computed that between sixty and seventy per cent. were in a condition which would enable them to claim occupancy-rights under the present Bill. Still there is an important residuum, and the question at issue is—does public policy require us to protect the position of this residuum at the expense of the powers now held by landlords? The reasons which led the Government to answer this question in the affirmative may be gathered from the following extracts from their despatch No. 16 of last October to the Secretary of State. They said, with reference to the very subject—'We have first to consider the proportion of cultivators whom the scheme leaves unprotected,' and, after referring to the figures quoted above, the despatch goes on—

'The proportion is at best conjectural, and we are not concerned to insist on its accuracy; but the important point to be remembered is that the number of unprotected raiyats, whatever it may be at the moment when legislation is completed, will, under your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by purchase or pre-emption on the part of the landlord, by death without heirs, or by abandonment of the occupant, falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlord's interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating, as regards tenants from outside, the accrual of occupancy-rights by twelve years' prescription on such land; the old series of litigation, enhancement and ejectment will recommence, and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.

'In the meantime, it is abundantly manifest that the position of this unprotected residuum will be infinitely worse than that of unprotected raiyats under the existing law. At present, the landlord can effectually prevent the accrual of occupancy-rights by merely shifting his tenant from one patch of cultivation to another; under the proposed rule it will be incumbent on him to turn the tenant out of the village altogether, out of his house and homestead as well as out of his land, and we have every reason to believe that this power, which, even as a threat *in terrorem*, would be productive of the worst consequences, would in many cases be actually put in force.'

"And they added—

'fence round the twelve years' rule as we may, any rule which makes it to the interest of the landlord to prevent the growth of prescriptive rights leaves of necessity to him both the power and the inducement to put such pressure on his raiyats as cannot fail to become intolerable.'

"They explained, therefore, to the Secretary of State that it would be in their opinion necessary, in introducing a modified twelve years' rule, to combine it with a system of compensation for disturbance to unprotected raiyats.

"There is another point to be considered. It is admitted that the definition in Act X does not override occupancy-rights which may have accrued by custom outside that Act. I have quoted from Messrs. McDonnell and Edgar, and might adduce much similar testimony as to the general existence in some parts of the country of a customary right of occupancy quite independent? of any fixed limit of time. I have given the evidence supplied from one Munsifi in Central Bengal of the transferability of the rights of korfa raiyats,—evidence consisting of the fact that no less than 40 such holdings have, in the course of the last few years, been brought to sale in execution of decree, and fetched very substantial prices, as much as ten and fifteen years purchase of the rental. I have here a table supplied from another Munsif in Jessore, showing that in Court, in the course of two months, some 35 under-tenures, many of them technically korfa tenures, and all coming under the ordinary head of non-transferable rights, had been sold.

"Now, if such under-tenures can be sold for substantial sums in execution of decree does it not follow that the holder has in them a property worth protecting? And, if we are to carry out the accepted policy of establishing 'the occupancy-tenure on a broad and permanent basis,' of securing 'a substantial tenantry free from debt and in a position to save and bear the pressure of occasional bad seasons,' are we not justified in taking steps to protect within reasonable limits the non-occupancy-tenant from arbitrary evictions, and so to render possible the accrual of full occupancy-rights which the law aims at? As to the special method by which this should be done, there may well be differences of opinion. Whether you can, by fixing a nominal maximum of rent, practically diminish the value of the power of sub-letting is, I confess, questionable; and whether, in the case of non-occupancy-raiyats, competition will not overcome legislative restrictions on rents is no less doubtful. I admit also that compensation for disturbance is untried and may be open to objection, but while we must affirm the principle of giving this class a reasonable measure of protection, the particular method of arriving at this result is a subject for discussion in Select Committee, and it is one on which we shall be particularly glad to receive suggestions

"While dealing with this question of ordinary raiyats, it behoves me to say something on the subject of sub-letting. We have been asked to prohibit sub-letting, and have been told that in the extension of sub-letting lies a danger which may involve a new departure in another generation or two, as a new class of *rack-rented* raiyats grows up on the soil; but it is impossible, as has been pointed out, to ignore the universal custom of sub-letting, or to change the status of all existing occupancy-raiyats and their sub-tenants. We have done what we can to discourage this habit. In the first place, by making occupancy-rights transferable, we take away one of the great inducements to sub-letting. In the second place, we put a limit on the rent which can be legally demanded from a sub-raiyat, and so leave but a margin of about ten per cent. between what the raiyat has to pay his landlord and what he can receive from his sub-raiyat.' Ordinarily, therefore, it would be better worth his while to cultivate himself, or to

sell, than to sub-let. In the third place, we make it part of the law that the tenant should obtain his landlord's permission before sub-letting; otherwise the sub-tenant's crop is liable to the landlord's distraint, and this right the landlord is not likely to abandon. Whether these provisions will really check the habit of sub-letting, I cannot say. I am quite sure direct prohibition would be ineffectual, and I am also quite sure that the question is one which depends on economic causes, and which legal checks can only very partially regulate; but it seems to me that, until the difference between what he receives from his under-tenant and what he pays to his superior landlord becomes so large as to enable the occupancy-raiyat altogether to divorce himself from the soil, the custom of sub-letting will not be encouraged, for the occupancy-raiyat can, in the present state of affairs, find no other means of occupation; in the meantime, therefore, the tendency of our legislation will be to keep the great bulk of the occupancy-raiyats on the soil, but more able to subsist comfortably and to resist adverse circumstances than at present; anyway, I don't think legislation can wisely go further in this direction than we are doing, and, as Mr. Ilbert said in his opening speech,

'sufficient for the Statesman if he can grapple with the problem of the day; for the distant future he must leave posterity to provide.'

"And now I come to the point against which the main attack of the opposition is addressed, namely, that while we have done everything to increase the security of the raiyat, we have done nothing to carry out the two objects for which legislation was originally demanded, namely, to facilitate the recovery of his rents by the zamíndár, and to give him a sure and satisfactory method of enhancement. Many of the objections were answered in advance by Mr. Ilbert. He has shown what we have done and why we have been unable to do more. In the matter of procedure for recovery, he showed that there was no royal road to the discovery of facts; and by shortening the code of procedure you do not shorten procedure itself; that you cannot, without danger of gross injustice, shift in these cases the burthen of proof, and that the real reason why rent suits take time is that there are generally substantial issues to be tried, and substantial injustice, especially in executing *ex-parte* decrees, to be guarded against. What we have done is to give a modified power of distraint, which is really a form of attachment before judgment, and should in very many cases take the place of a suit altogether. Doubtless, as has been urged upon us, many zamíndárs would wish to be able to exercise this power of distraint directly and of their own authority, instead of through the intervention of the Court. This is what is now very generally practised in Bihár, and it has been defended by certain zamíndárs in the papers before us, as well as in this Council, as being less tedious and less expensive to the raiyat than the regular process. Doubtless a creditor migt say, it would be much shorter, and perhaps less expensive to his debtor, to take the purse out of his pocket than to sue him for the debt, but neither the law nor the debtor look at the matter from this point of view. The law calls it robbery, and the debtor is likely, either to resent it by violence, or by getting the law to enforce the penalty for robbery. In other words, we cannot allow one of two disputants to be the judge in his own cause—no, not even judge in a Court of first instance, and though his decision be open to appeal, for this is the plain meaning of giving him summary powers of distraint and leaving the raiyat to contest it by suit. In ordinary suits, where distraint through the Courts is not had recourse to, Mr. Ilbert has described the procedure based very much on that of the Small Cause Courts, and abolishing all unnecessary delays, and disallowing appeals in petty cases, and has explained our readiness to consider in Select Committee any further simplification, should such simplification appear consistent with justice to both parties.

"But it is not merely a shortened procedure; it is a summary procedure, which is wanted,—a procedure, in fact, which will give the landlord the benefit of the presumption in his favour, and place on the raiyat the onus of proving that the presumption is erroneous.

"Now, there are only two forms of summary procedure—one through the intervention of our Courts, the other through executive authority, like the certificate or patní procedure.

"Summary procedure through the executive authorities has long been tried in India. There are numerous examples of failure. Up to 1859, a zamíndár could enforce payment of rent either by distraint or summary suit before the Collector. This was discontinued by the framers of Act X. The raiyat had no remedy but by a regular suit, and this, the framers of the Act declared, was 'almost tantamount to refusing him any remedy at all." The abolition of these summary powers was objected to then by the British Indian Association, much on the same grounds as those now put forwarded (as indeed were all the restrictions on the zamíndár's power, including that of arresting their raiyat); but these objections were deliberately overruled. The question of a summary procedure through the executive authorities was then definitely settled in the negative, after an experience dating back to 1799. Nor has summary procedure through the Court been found more satisfactory. I believe the experience of the proceedings under section 530 of the old Procedure Code fully justifies this assertion. The hon'ble gentleman opposite now asks that we should give to the zamíndár's the same summary procedure (that of the Certificate Act) which the Government use in recovering public demands. In the first place, let me point out that under this Act, in Government estates, the Collector is himself the Court, and may be trusted to decide with reasonable fairness between the manager of the estate and the raiyat, and only with his sanction, after hearing objections, can a certificate be executed. What similar security can zamíndárs offer? But I will, in answer to the hon'ble gentleman's demand for this procedure, quote no less an authority than that of Rai Kristodás Pál, Bahádur, himself. When it was proposed to apply this procedure to the

recovery of arrears of rent due on estates under the Court of Wards, speaking in the Bengal Council, he said—

"That would be opposed to right principle. Rent-suits sometimes involved questions of right and other complicated matters which were best left to the Civil Courts. It was observable that the certificate of the Collector under this Bill, in respect of this class of cases, would not be absolute but conditional, and that liberty was given to the aggrieved party to apply to the Civil Courts for redress within a year of the making of the certificate. If, then, it was considered necessary that the ultimate remedy should be sought for in the Civil Court, he did not see the necessity of providing for that class of cases the summary procedure of a certificate; it would only lead to additional expense, trouble and harassment, and he considered it much better that the procedure should be simplified, and suits for recovery of rent dealt with by the Civil Court at once, than that the certificate procedure should be first gone through as provided in this Bill, and the same thing should be gone over again in a regular way before the Civil Court.'

"I think the objection is sufficient, and I wish no better justification for our refusal either to imperil justice by the adoption of a summary procedure without redress, or, by giving the redress of a regular suit, to open the way to 'additional expense, trouble and harassment.' I am grateful to my friend for the plume which wings my shaft. At the same time I must admit that we are bound to provide the speediest and easiest method of recovery that can be devised, provided it is quite consistent with the security and protection of the raiyats; and, if anyone can devise a more expeditious method, which shall not jeopardize greater and more important objects, I shall be very glad indeed to receive the suggestion. And now, is it the case that we have done nothing to enable zamíndárs to obtain readily a reasonable enhancement of their rents?

"In 1867, again in 1875, and still at the present day, the landlords have complained that though Act X of 1859 gives them the power to enhance, yet, owing to defects in procedure, they cannot put that power into effective action. So far as enhancement through the Courts on the ground of increased value of produce goes, they say the law is a dead letter. We have to admit that to a great extent this is true. The application of the law requires the Courts to ascertain a series of economic facts, concerning which it is impossible for the landlord to put before them in most cases the requisite evidence. Well, we have made a real endeavour to grapple with this problem. We have provided a scheme by which tables of rates corresponding to the old pargana rates should be fixed by the Revenue authorities, and we have provided for the Civil Courts applying these tables to the individual suits brought before them. In other words, the economic questions which have paralysed their action hitherto will now be solved for them by the Revenue authorities, and all they will have to do will be to apply them or to decide upon special pleas put forward to show why they should not be applied. But we are told that these tables of rates will be unworkable. I think in some parts of the country it will be found that the existing rates are so multifarious, and depend so little on the quality of the soil or value of nett produce, and so much on other considerations, that the preparation of those tables will be difficult, if not impossible. In other parts of the country, there will be much less difficulty in their preparation. But the scheme is admittedly experimental. I hear that Mr. Finucane finds pargana rates, never changed since the Permanent Settlement, still existing in parts of Jessore, as Mr. Westmacott found them still existing in Dinájpur. Preliminary enquiries are now being conducted by experienced officers under the instruction of His Honour the Lieutenant-Governor, and, when the Select Committee meet in November, we shall be in a better position than we are now to judge of the chances of success. If it succeeds, there cannot be a doubt that the solution of the vexed problem will afford the zamíndárs a far more satisfactory method than they have ever had before, of legally obtaining a fair share of the increased produce, or increased value of the produce, of the soil, and they at least will have little cause to complain. If it fails, we provide another method on which they can fall back, and that is the regular settlement of rents by a revenue-officer, the procedure for which will be found in Chapter XI. This procedure is not applicable, it is true, to single suits; it only provides for those cases where large numbers of tenants have to be dealt with; but it is these cases that most require to be provided for, and which most lead to disturbance. Here, again, I may say that we are most anxious to receive criticism and suggestions.

"I feel that, both in this matter and in that of a speedy recovery of arrears really due, the zamíndárs are entitled to ask of us whatever assistance consistent with the interests of justice it is in our power to give them, and it is a matter of regret to me that the inherent difficulties of the problem are so great as to render a thoroughly satisfactory solution of them impossible. I have alluded to various abuses to which the raiyat is liable, but I am not at all insensible to the other side of the question, and I hope that further discussion may enable us to hit on some method of improving on the proposals of the Bill in this respect. I have now said all I have to say in reply to the objections taken to the leading principles of the Bill. I have purposely passed over many objections taken to minor points, and I feel that an apology is due for having, as it is, trespassed so long on the time and attention of the Council. But there is one subject in connexion with the history of the Bill on which, though it has not been mentioned either in Mr. Illbert's opening speech, nor in the course of the debate, except cursorily, by His Honour the Lieutenant-Governor, I have still a few words to say. It refers to Bihár. Now, though the origin of the Bill, as regards Bengal, was the demand of the zamíndárs for greater facility to collect rents and to enhance;—a demand which, as soon as it was looked into, showed also the necessity of simultaneously securing greater fixity of tenure and limitations to enhancement; in regard to Bihár the genesis of the Bill was different. There the primary object was to secure the tenant in the rights which were fast slipping from his grasp, and the facilities required by the landlords were a secondary object. If we look to the draft Bills forwarded by the Bihár Committee at Bankipore, this difference is very apparent, and

I may be asked, what has become of the suggestions of the Bihár Committee? Well, their work was referred to the Rent Commission, which remorselessly eliminated many of their suggestions. They refused to deal with the filing of zamíndárí accounts, to exclude from evidence the loose sheets that now take the place of village-records; they refused to make the interchange of pattás and kabúliyats compulsory, though they partly provided for this by making a decree take the place of a pattá; they refused to insist on counterfoil receipt-books; in other respects, they conceived that the measures proposed for Bengal would suffice for Bihár, except in regard to bhaoli rents, for which they made specific provision. The Government of Bengal, acting on Mr. Reynold's suggestions, made specific provision for measuring and recording zarât, and preventing the growth of occupancy-rights therein, and also for preventing raiyati land being further absorbed into zarât. It followed the North-Western Provinces rules as regards appraisement and division of the crop, and allowed commutation of grain into cash rents at the request of the raiyat. It also provided a rule, which the Government of India have tentatively eliminated, for restricting thíkádárs from enhancing, a restriction which can easily be evaded, and finally it vested possession of the crop in the raiyat, so as to make the common restraint and interference with it on the part of the landlord criminal trespass. They also proposed to have a cadastral survey and record-of-rights undertaken experimentally in the Patna Division, and this subject, as we have heard, is now under the Lieutenant-Governor's consideration.

"It will be seen, therefore, that while some of the special sections intended for Bihár have been made general, some of the general sections have been so altered as to be made applicable to Bihár. Thus the provision for measuring and recording the zamíndárs' private lands has been made permissive for the Lieutenant-Governor to introduce into those districts where it appears needful; the maximum limit of produce rents in staple crops has equally been made of general application. On the other hand, the general provisions about making receipts full and complete in themselves has been accepted as sufficient to meet the requirements of Bihár. So also has the principle of allowing distraint only through the Court. This, and the provision for vesting the possession of the crop in bhaoli land in the tenant (which is merely a distinct statement of the existing law, I believe), will do much to remove the special evils of the illegal distraint on crops, which, I am afraid, in spite of what was said yesterday, is still very common in Bihár. I must not detain you longer on this subject.

"What has now to be done is this. The Bill is to be referred to a Select Committee at once, but we do not propose that the Committee should meet till the Council re-assembles in November. In the meantime, there will be ample time for discussion, and we hope, before that time comes, to receive the matured opinion of the Government of Bengal, and its most experienced officers, and of the various Associations and individuals interested in the subject. We cannot have too much light. You may have heard of a comparison in which, in the present state of medicine, nature and the disease are likened to two men fighting, and the doctor to a blind man who strikes in with a stick, but whether he helps nature or helps the disease is a matter of accident. Of course such a comparison is most unjust, but I have often thought that, if not applicable to medicine, it was not wholly inapplicable to such legislation as introduced the twelve years' rule of Act X. At least, we must endeavour to avoid that error; we must get as much light and as much criticism on the Bill as we can. I hope that during the Simla sessions much of this criticism will be digested and considered by the Government, and that, when the Select Committee meet in November, much of the ground will have been cleared, and we shall be able to throw overboard at once any provisions which may be decisively and on good grounds condemned as useless and unworkable.

His Excellency THE PRESIDENT said:—"The full discussion which this question has received, and the able speeches which have been made by those hon'ble members who have addressed the Council, leave me but little to say. And yet I should not like to allow this debate to close without making some observations on the subject, which has engaged the attention of the Council for the last two days. I need say nothing in regard to the history of this question down to the present time. That history has been very fully laid before the Council by my hon'ble and learned friend Mr. Ilbert, by Major Baring and other hon'ble members. And they have shown that the direct intervention of the Government of India has only been called forth at the last stage of these proceedings, after every point connected with the matter has been examined, considered and threshed out by one of the most complete enquiries that any question, I believe, has ever undergone in this or in any other country. As far as the present Government is concerned, they took no official steps in the matter until they received the letter of Sir Ashley Eden in June, 1881. And, indeed, for myself, all I had done in regard to it up to that time was to commence a study of the voluminous literature already accumulated on the subject. When that letter of June, 1881, was received, containing the clearly expressed and matured views of the Government of Bengal, it then became our duty to take up the question, carefully to consider all the information which was supplied to us and to determine the course which we should take. Now it seems to me that it cannot by any possibility be denied that, after the long discussions which have taken place on this subject, extending over many years, over the tenures of office of successive Viceroys and Lieutenant-Governors of Bengal, the time has fully come when it is absolutely necessary in the interest of all parties that a settlement should be arrived at. That some legislation on this subject is required has long been admitted by the zamíndárs, and it was not denied yesterday by my hon'ble friend Mr. Kristodás Pál, in his able speech. Legislation on this subject is necessary. But I strongly hold that you cannot legislate on one part of a question of this kind alone. Various attempts to do so have been made, but I am of opinion that the Select Committee on Sir Ashley Eden's Bill of 1878 were perfectly right when they came

to the conclusion that they were unable to deal with one part of the question, and that no satisfactory solution could be found unless it was taken up as a whole. That decision was approved by the Government of Lord Lytton, and the Rent Commission was issued, and I can only add my testimony to the ability, the zeal, the industry and the intelligence with which the members of that Commission discharged their duty. As has been truly said, we have in this case to deal with very different states of things in different parts of Bengal. In some parts of the Province the raiyats are strong and the landlords are weak; in other parts of the Province there is an opposite state of things, inasmuch as the raiyats are weak and the zamíndárs are strong. And that very diversity of circumstance of itself seems to show that if you are to treat on this subject, you must deal with it for Bengal as a whole. You must look to the interests of both zamíndárs and raiyats; you must consider what is the position of the landholders, and what is the position of the tenantry. You are bound to consider broadly and generally the interests of both parties to this great controversy. But then the preliminary objection is often taken that, on a wide view of this question, the Government and the legislature have no right to interfere between the zamíndárs and the raiyats in Bengal. Now, I was much struck by the line which was adopted by my hon'ble friend Mr. Kristodás Pál in regard to this branch of the question. He did not urge directly that the Government (and by the Government I mean both the Executive Government and the legislature—the Government in its largest sense) is not entitled, in consequence of the Permanent Settlement, to deal with the question at all. He approached very nearly at times, in his speech, to that assertion, but I observed that he never actually made it, and I was not surprised that one so skilful as he is, and so practised a debater, should have steered clear of that assertion. He knows the question well, and he must feel the force of the arguments which can be, and which have, in the course of this discussion, been ably urged to show that the claim which has been set up by and on behalf of the zamíndárs, to the effect that the legislature and the Government are debarred by the agreement of 1793 from interfering on behalf of the cultivators of the soil, is not tenable. The clause of the Permanent Settlement which bears on this subject has been read to this Council more than once in the course of this discussion, but, nevertheless, I must read it again, because it is of the greatest importance that in a matter in which there is even an insinuation that a question of good faith is involved, there should be no mistake whatever. These are the words which have already been quoted in this Council, and which it is essential that this Council, in dealing with this question, should bear in mind—

'It being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil, and no zamíndár, independent taluqdár or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.'

"Now, as it seems to me, nothing can be clearer or more precise than that language. In those days, in many public documents, clearness and precision of language was frequently wanting; but I do not think that the most able draftsman in the world could easily have devised language which is more perfect and more absolutely clear than that which is contained in this passage. And it appears to me that that passage dispels at once all idea that the Permanent Settlement prevents the Government from coming to the assistance of the tenants. I hold, on the contrary, that it shows that the Government, in 1793, gave to the raiyats and all the cultivators of Bengal a distinct and binding assurance that they should look to them for protection and for the promotion of their welfare. It appears to me that under these words the Government gave a distinct pledge that they would protect the raiyats and promote their welfare. My hon'ble friend Mr. Kristodás Pál said, in the course of his speech yesterday, that he regarded the Permanent Settlement as the charter of the landlords and tenants in Bengal. I am willing to accept that statement; but if it is so, it is a charter given by the Government to the landholders on the one hand, and to the tenants on the other. Now, let us for a moment look at the mode in which the engagements of that so-called charter have been fulfilled. From the moment when it was promulgated, the zamíndárs and other landholders of Bengal, as a class, obtained substantial benefits, which have subsequently been growing in value and importance from year to year; while, on the other hand, the cultivator of the soil received nothing but an assurance which, for long years of gradual depression, through what His Honor the Lieutenant-Governor of Bengal called to-day the culpable negligence of the Government, has been permitted to be wholly barren. Act X of 1859 was an honest attempt to give effect to that assurance. It was an attempt wholly unjustifiable, if the contention that the Government is precluded from interfering between landlord and tenant is a sound contention. But it is obviously clear that the Government and the legislature who passed Act X of 1859 did not for one moment admit any contention of the kind. That Act has undoubtedly done good, and I am not in the least inclined to decry it; still less am I inclined to think lightly of the purpose and intention of those who framed and passed it. But that Act has failed to fulfil all the objects for which it was introduced, because its authors did not foresee the mode in which their intentions might be set aside and rendered nugatory. I have heard it stated that the late Mr. O'Connell is reported to have said that he could drive a coach-and-six through any Act of Parliament. Whether he could perform that feat or not I cannot say; but I will say this, that a coach-and-six has been driven, at all events, through the intentions of the Act of 1859, and that measures have been devised for evading what I cannot doubt to have been the object with which that Act was passed.

"But it has been suggested that we have no right to touch this question; because the zamíndárs have been called proprietors and owners of the soil, it has been contended that it follows necessarily that they have a full and absolute right in the property, and that no one else has any interest in the soil at all. On the meaning of the words 'proprietors and owners', this question very largely depends. My hon'ble friend Mr. Kristodás Pál, and still more Rájá Siva Parsád, if I followed him, appeared to contend that no man could be called a proprietor who had not the most absolute and complete right to do in every respect whatever he pleased with the land. That certainly is not the notion which we entertain of an owner or proprietor of land in England. A great deal has been said about the zamíndárs having been made proprietors after the English fashion If that is so, then I must point out that the vast majority of land in England is held by people who are owners in only a limited sense, who cannot sell or mortgage the land without the sanction of somebody else, and who very often cannot sell or mortgage at all. And it is quite a mistake to suppose that, because a man who has a limited interest in land is called a proprietor and owner, therefore he becomes an absolute proprietor and owner, and is given an absolute fee-simple right to the land to do what he likes with it. So far as I am able to judge by all the evidence which I have seen on this complicated and much contested question of land-tenures in India, I am led irresistably to the conclusion that there never has been in India an absolute owner of the soil in whom every possible kind of right of property is vested. It appears to me indisputable that the raiyats and cultivators of the soil have always had, or at least a great proportion of them have always had, rights in the soil more or less perfectly secured to them according to the circumstances of the time and the position of the parties, that rights of this description have been at all times recognised, and that they have never been abandoned by those who believed that they possessed them. And it must be remembered that, if it be true that ninety per cent. of the tenants in Bengal are occupancy-tenants now, or, to take the lower estimate which I have seen put forward upon good authority, that seventy per cent. only of them are now occupancy tenants, it is perfectly clear, at least as regards nine-tenths or seven-tenths of the landlords of Bengal, that they are not absolute owners in the sense in which the words have been used by the opponents of the Bill in the course of this discussion. And, as I have spoken of the position of the zamíndárs, I should like, in passing, to say that no man can recognise more fully than I do the truth of what was stated by the Mahárájá of Darbhangá yesterday, whose presence in Council, I am sure, we all welcome, when he said, in modest terms, that the landholders of Bengal were not all bad landlords; I have not the slightest intention of asserting that they are, and if you want any proof to the contrary, you will find it in the facts brought forward by the Lieutenant-Governor of Bengal in regard to the estates of the Mahárájá of Dumraon.

"It is not a question of the personal character of individual zamíndárs, but it is a question of what are the rights of two parties—both having some rights in the land—the stronger of these two parties, the zamíndárs, in many instances, resisting the rights of the other, who, on account of their weakness, are entitled to receive protection from the Government. Now the Hon'ble Kristodás Pál, in speaking on the Bill, described it as a measure which involved the redistribution of property. I confess it seems to me that, looking at the past history of this matter, looking at the gradual lessening of the rights of the raiyats since the Permanent Settlement, looking at the extent to which their position has, from a great variety of circumstances, been weakened since that date, and at the manner in which they have lost rights, which, to my mind, it is clear that they originally possessed, it would be much more true to say that this Bill is a Bill for the restoration, rather than for the redistribution of property. But it does not go so far; we do not propose to restore to any portion of the cultivators of the soil the position in which they would now stand, if the system which was in force at the time of the Permanent Settlement had been unaltered down to the present time. What this Bill does is to leave the landlord, broadly speaking, all the advantages which he has acquired during these ninety years. It leaves him the rent which he now receives. All it says to him is 'Your power of enhancement and eviction shall be, to a limited degree, brought back in the future to the position in which it stood ninety years ago.' To my mind, then, so far as regards any question of right, we have to-day a most plain right—a right which was asserted and exercised in 1859—to deal with this question, if we consider it necessary, for the purpose of protecting the interests and promoting the welfare of the cultivators of the soil. And we propose to take steps for that purpose which will fall very far short of restoring the cultivators of the soil to the position in which they originally stood. To attain this end, so far as can now be done, is the principle and the main object of the Bill which we are now considering. I will now pass, therefore, from the point which is really the only point under discussion at this stage, namely, the principle of the Bill, and I will consider, as briefly as I can, some of its leading provisions more in detail.

"And, first, with regard to the question of occupancy-raiyats. All that this Bill will really do, will be to render more effectual what was the true object and intention of Act X of 1859. As I have said, I do not believe that the framers of that Bill anticipated the mode in which the proposal which they then made would be evaded, and I feel no doubt whatever that, if they were here to-day to speak, they would accept, upon this point at all events, the legislation which we are now proposing as the most effectual means of carrying out their original intention. I was very much struck yesterday by a reference which was made by my hon'ble friend Mr. Evans to a letter, which I think he said he had seen in a newspaper, from a Bengal zamíndár, in which the writer said that he recognised that the great body of the raiyats had a moral right of occupancy in their holdings. The law cannot deal with a purely moral right; but the moment you get so far as to say that a man has a moral right to an occupancy tenure,

you are very near the day when the legislature will say 'We will convert that moral right into a legal one'; and that is all we propose to do here now. It is admitted, upon all hands, that Act X of 1859 was intended to preserve all customary rights, and the twelve years' rule was introduced for the purpose of giving rights over and above those which existed under the customary rules. In fact, the twelve years' rule was not intended, whatever may have been its practical effect, to exclude from the right of occupancy any *khudkásht* raiyats, or, as they were called 'resident' raiyats, but, on the contrary, to bring within the benefits of that right certain other tenants, not resident raiyats, who, under the original definition of the Bill, would have to be excluded. Unfortunately, as I have said before, this Act has been so worked, that what was meant to give additional security has had the contrary effect, and has deprived many resident raiyats of what would have otherwise been their clear rights. Now, for my own part I confess that, in considering this question, I cannot altogether divest myself of the fear that, so long as you have a fixed limit of time at the expiration of which the raiyat will obtain a right of occupancy, there will be more or less danger of a continuance of the proceedings which have been resorted to under Act X of 1859. My own view on this subject has been very ably stated by Mr. Justice Cunningham in his Minute on the Rent Bill. Mr. Cunningham says:—

'But this happy state of things becomes impossible when the legislature enacts that, at the end of a stated period, the tenant shall change his status, and the landlord lose a considerable portion of his rights. The two parties are throughout necessarily at arms length, and, as soon as the period approaches, the landlord naturally does something to prevent the accrual of the prescriptive right, and is always on the look-out to prevent the growth of occupancy-rights, and to destroy them where they now accrued.'

"That was the reason, the desire to avoid that source of differences and possibilities of contention, which led me, in common with my colleagues, to submit to the Secretary of State the proposal which is contained in our despatch of March last. Lord Hartington did not approve of our proposal on that point, and preferred that the Bill should be framed in the manner in which it has been drawn up and is now before the Council. I certainly do not doubt that the Bill in this shape will have a very beneficial effect. I am not at all sure that it may not, in the first instance, go nearly as far as the proposal which we made; and all I have to say on the subject is, that it will be the duty of the Government very carefully to watch the proceedings taken under this Bill, if it becomes law, in order to see that the process of shifting raiyats from village to village, from field to field, does not spring up under this measure; and to stop what will be any clear and distinct evasion of the intention of this law.

"Now, passing from the subject of occupancy-rights, I have a few words to say on those provisions of the Bill which render void any contracts inconsistent with the general scheme of the measure. When you have to deal with a matter in which the practice of contracting out of the law (legally contracting, I admit) has been very largely resorted to, so as to show that those who have the power have not the inclination to conform to the obvious intentions of the legislature, it becomes a very serious question, at all times and in all countries, to what extent the legislature should allow their intentions to be overridden by an arrangement between two parties who stand towards each other in such very different relations in point of strength and position as the raiyat and the zamíndár. I will give you an instance drawn from my own experience. Some years ago, an Act of Parliament was passed in England, on the subject of giving compensation for improvements to English tenants. It was wholly a permissive Act; it showed clearly the mind of the legislature, but it was left to the parties, or really to one of the parties concerned,—the landlord,—to decide whether he would be bound by the Bill or not. The majority of English landlords, the majority even of those who supported the Bill, proceeded at once to render it inoperative, and it had very little practical effect; so little that I was one of the very few people who did act under it. And what was very much like some of the proceedings complained of in some Government departments here, the Government themselves, under their own Bill, gave notice to all their tenants that they would have nothing whatever to say to the Bill. What has been the consequence? why, at the present moment Parliament is about to take up this question again, and to pass a Bill which will make it compulsory upon both parties to enter upon these arrangements, and will prevent them from contracting themselves out of them. The general principle of making the Bill compulsory on both parties is pretty well agreed upon on both sides of the House of Commons. The case here is very similar. We have parties contracting out of the provisions of the law, and if that law is to have any effect at all, the only process by which it can be made effectual is to say to these parties, 'You shall not be permitted to contract yourselves out of the law'. Surely it is high time to do so when we find men contracting themselves out of this and many other laws which impose cesses upon landlords, and which forbid the imposition of illegal cesses upon tenants, such as *abwábs* and other forms of illegal taxation. Upon this point I can only say that we are acting upon principles generally recognized in cases where the legislature finds itself in the position of having no alternative except to make the provisions of the law imperative upon the two contracting parties; for it is useless to pass this or any other measure unless it is determined that its provisions shall be enforced, and that the parties shall not have the power of escaping from them.

"Something has been said about the conduct of Government officials in Court of Wards estates and in other estates. His Honour the Lieutenant-Governor has told you to-day of the orders which have been recently issued on that subject, and I can only say that these orders are entirely approved of by the Government of India, and that we have taken steps of a similar kind in regard to the other parts of India.

"Now, with respect to the question of transferability. The evidence appears to me, I confess, to be overwhelming, that in the greater part of Bengal the practice of transfer exists under a custom which the Courts have recognised. The Government of Bengal in one of the papers—I think it is the letter of Sir Ashley Eden—says 'that the weight of opinion received is in favour of recognising in the law what is an almost universal custom of the Province,' that is the custom of transfer. If it is an almost universal custom in the Province, it is only right that it should be recognised, and it appears to me that it is in the interests of the zamíndárs that it should be recognised in the mode in which we propose to recognise it; because where this custom exists now the landlord can put in no claim for pre-emption. If we are going to reduce the right of anybody in regard to transfers, we are going, practically, to limit the right of the tenant, and not of the landlord, by giving the latter a power to come in and say: 'I claim to buy what you want to transfer,' and at a price to be settled by a Court instead of at the highest price which the tenant would otherwise obtain. There is a great deal to be said against giving the landlord this power, on the ground that the Court might adjudicate a price very much below the price which the tenant could get under the existing custom.

"The Hon'ble Kristodás Pál seems to think that the result of these provisions will be to force both parties into Court; but they may agree out of Court if they like Would my hon'ble friend prefer that the landlord should be obliged to give whatever any other person offered the tenant for the holding? That is an amendment which may be considered in Committee, but it would not, in my judgment, be in favour of the landlord. It appears to me, I must say, that it would not be fair to the landlord to proceed in that way, because it would be very easy for the tenant to have a collusive sale and to get some friend to come forward and pretend that he was willing to buy at a very high price his occupancy-tenure, and thus to make it almost impossible for the landlord to exercise his right of pre-emption; and besides this, I am told that it happens in many parts of the country, that neighbours who are not on good terms with a zamíndár are often ready to pay a fancy price in order to annoy the landlord. This, I think, ought to be prevented, even at some risk of diminishing the rights which exist in many parts of the country under the custom of the present day, and we ought, therefore, to give the landlord the right of pre-emption at a rate to be fixed by the Court. If it is true that the system of transfer, as the Bengal Government has stated, is an almost universal custom of the Province, this provision is rather in favour of the zamíndár than otherwise, and I observe that the Mahárájá of Darbhangá was inclined to take that view.

"Passing from that point, I come to the question of enhancement. Now, the position of the law with regard to enhancements is this. The Hon'ble Kristodás Pál has told us that enhancements are now practically at an end, and it is, I believe, generally admitted that, under the law as it stands at present, it is extremely difficult for a landlord to get even a just and reasonable enhancement. Notwithstanding that absolute right of property which we hear so much about, the landlord cannot now enhance, except under certain conditions laid down in the Courts. The practical effect of our proposal would be, I believe, to make just and reasonable enhancements more easy and not more difficult to obtain than at present; and I know very well that many persons who feel very strongly on the subject take objection to the Bill as now framed, because they think that it will have the effect of rendering it practically easier to enhance than at present. At the same time we do take, and deliberately intend to take, ample provision against unfair and unjust enhancement, against rack-renting and agaist depriving the tenant of his fair share of the produce. That we deliberately intend to do; but we are ready to render it easier than at present for the landlord to secure such enhancement as the law declares to be right. I won't detain the Council now with any remarks upon the subject of the tables of rates. The Hon'ble Kristodás Pál seemed to deprecate that part of the Bill. It will, no doubt, receive the careful attention of the Select Committee, and by the time the Select Committee meets we shall have a great deal of practical evidence upon it, and it will then be for the Select Committee to consider how far the principle can be applied. I think the principle would be useful, but it is not essential to the system of the Bill. It may be applied to one part of the country and not to another. I said just now that we did not intend to permit the rents of these occupancy tenants to be unduly enhanced, and that is why we have fixed a maximum. The question of the amount of that maximum is undoubtedly an important one, requiring the consideration of the Select Committee. The difference between twenty and twenty-five per cent. is not very great; and the Lieutenant Governor has before him evidence which shows that twenty per cent. is as far as we ought to go.

I come now to what the Bill calls the ordinary raiyat. We have thought it right to give a man in that position a certain amount of security, a very much less amount of security than is given to the occupancy tenant, but still some degree of security, and we propose to give it in two ways: first, by fixing a maximum similar to, but higher than, that fixed for occupancy-tenants; and, secondly, by providing compensation for him in certain ways. I must say that I have found it by no means easy to get a clear idea of what is the position of these tenants at present. Mr. Field, in his Digest,—that very able work for which we owe him so many thanks, and of the accuracy of which we have so many proofs,—lays it down, in the 51st article—

'The rent of a raiyat not having a right of occupancy can be enhanced only after service upon him of a notice of enhancement in the manner provided by article 45. If after such a notice has been served upon him, such raiyat elect to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent therefor.'

"Well, reading that, you would suppose that the intention was that this tenant should have the right to sit on the land at a reasonable rent; but, on the other hand, the landlord has power to give him notice to quit, and if he does, the tenant has to go; so, while it would

appear that the law recognises, to a certain extent, the right of the tenant-at-will to sit on the land at a reasonable rent, it gives him no practical means of securing that right. I am not inclined to put this man in a worse position than he is in now, or than the law intends him to be in, and it appears to me, therefore, that it is quite impossible for us to overlook his position and leave him altogether under the operation of a law which, as far as I can understand, is very vague and uncertain. The tenant in this position is regarded and spoken of as a tenant-at-will, and I believe the Courts regard him in that light; but at the same time I am, I think, right in saying that the idea of a tenant-at-will is a purely English idea, and that, according to indigenous Indian ideas, no person can strictly be described as a tenant-at-will. Now, with regard to compensation, we propose to give him compensation of two kinds—compensation for improvements and compensation for disturbance. As to compensation for improvements I have little to say; because if a tenant makes *bonâ fide* improvements which add to the letting value of the land, and, therefore, enables the landlord to obtain more money for that land, then I say here, as I have always held at home in regard to my own tenants, that it is only common honesty that that man should be compensated for those improvements. It is, of course, necessary that the improvement should be a *bonâ fide* substantial improvement, and not anything of a purely temporary character, or which forms part of the ordinary processes of good husbandry. I am told that there are banks made between one field and another, and *kacha* wells which are made one year and renewed the next; but these are not permanent improvements, and it will be for the Select Committee to decide for what improvements compensation should be paid. All that I say is, that when a man leaves my land he is entitled to be paid for anything he has done from which, when he leaves, I shall reap benefit. As regards compensation for disturbance, the main objection urged against it is that it is unknown in India. I do not deny that that is a *primâ facie* objection to the system, and if those who do not like it will produce before the Select Committee any better proposal that gives fair and reasonable protection against arbitrary evictions, all that I can say is that we shall be perfectly willing to consider it, and that if it is better than our plan, and more in accordance with Indian customs, we shall accept it. But I must say that the argument that it is a system unknown in India does not lie altogether in the mouth of those who have been arguing in the course of this discussion in favour of the theory that the land-owners of Bengal are land-owners after the English fashion, and that the tenants in Bengal are tenants-at-will according to the English meaning of the term. You cannot introduce English arguments into one part of this controversy, and then object to their importation into another part; if any other plan can be suggested more in accordance with the habits of the people than that proposed it will be fully considered. But I am most desirous that something should be done for this class of men which will render real the security which the law appears at present to contemplate. The Hon'ble Kristodás Pál appeared to think, if I did not misunderstand him, that the class of persons to whom I am now alluding were in the same position as the *paikásht* raiyats. It seems to me that the position of the two is very different. What I understand by a *paikásht* raiyat is a raiyat who had less security and, therefore, paid less rent. Now, the position of these tenants is that they have less security and pay more rent. That has come about through the operation of those economic laws to which the Hon'ble Mr. Hunter alluded yesterday. When the *paikásht* raiyat paid less rent the land was looking for tenants, now the tenants are looking for land, and that is why, instead of paying less rent, they have to pay more. But that only brings them more and more into the category of cottier tenants, and any one who has studied the land question in any part of the world knows that a system of cottier tenants holding at competition rents is the worst land system that can be conceived. The Select Committee should bear in mind how desirable it is that we should not permit, under this Bill, a future upgrowth of tenants of this description; that is one of the points which the Select Committee should keep carefully before them. These men may be few in number now, but, as Sir Steuart Bayley said, there are reasons why under this Bill they may increase, and, if they increase largely, the result will be that this Bill will not prove a settlement, but that thirty or forty years hence we shall have to go further still. I do not think I need trouble the Council with any further remarks on the details of this Bill. All the matters which are really matters of detail are matters for the Select Committee. The Government invites the assistance of the Council, of the Select Committee, of the parties interested, of their representative associations, and of the public, in regard to this measure. They will on their part give their fullest and best consideration to any suggestions which may be made. We are about to give eight months for the consideration of this important subject, which is ample time, considering how long the matter has been under consideration. I have no doubt at all that the Bill is capable of improvement in many respects, and our only wish is that it should be made, during its passage through this Council, as good as possible for the purpose for which it is intended. I hope that all those who are interested in the matter, and who have studied it, will aid the Government and this Council by giving them their opinions during the time which will elapse before we resume the consideration of the Bill. I have only further to say that the desire of the Government in introducing this measure is to bring to a close a long continued controversy, to carry on and to complete the work of 1859, and to redeem as far as it is still open to them, the assurance given to the cultivators of the soil in 1793. All the changes which have taken place in the agricultural condition of Bengal—the great increase in the area of cultivation, the growth of the population, the substitution of English for Native ideas on the subject of landed property, the advancing prosperity of the country—have tended to raise the rents of the landlord, and many of them to weaken the security and reduce the status of the raiyat. All these advantages gained during the last ninety years will remain to the zamíndárs; broadly

speaking we do not touch them, but, starting from what we now find, we have endeavoured to make a settlement which, while it will not deprive the landlords of any of these accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement, and which we believe to be urgently needed, in the words of that settlement, for the protection and welfare of the taluqdárs, raiyats and other cultivators of the soil, whose interests we then undertook to guard, and have, to our shame, too long neglected."

The Motion was put and agreed to.

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# THE BENGAL TENANCY BILL, 1883.

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229. Náibs and gumáshtas of landlords.
230. Rights of pasturage, forest-rights, &c.

SCHEDULE I.—Repeal of enactments.

SCHEDULE II.—Extract from preamble to Regulation VIII of 1819.

SCHEDULE III.—Summary sale of patní tenures.

SCHEDULE IV.—Limitation.

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*Explanation of abbreviations in margin.*

D. means Mr. Field's Digest.
C. B., the Bill prepared by the Commission.
B. B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

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*A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.*

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows :—

## CHAPTER I.

### PRELIMINARY.

Short title.

1. (1) This Act may be called the Bengal Tenancy Act, 1884.

Commencement.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf.

[C. B., s. 1. B. B., s. 1]

Local extent.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa.

[C. B., s. 2. B. B., s. 2]

Repeal.

2. (1) The enactments specied in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Construction of Act.

3. The following definitions and rules shall apply in the construction of this Act unless there is something repugnant in the subject or context :—

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district : [D. § 1 C. B., s. 3. B. B., s. 3.]

(2) "Proprietor" means a person or a number of persons owing an estate : [D § 1.

(3) "Tenure" includes an under-tenure and the interest of every tenant of the class referred to in section 14. C. B., s. 3. B. B., s. 3]

*Illustrations.*

(a) A *durpatni* or *sípatni* interest or a mokurrerree holding is a tenure.
(b) A *dar-iyarah* or a farm for a term of years is a tenure.

(4) "Tenure-holder" means a person or a number of persons owing a tenure.

(5) A person shall not be deemed to be a raiyat, in respect of any land, or to hold that land as a raiyat, unless he holds it for the purpose of agriculture, horticulture or pasture, or he or his predecessor in interest came into possession of it for such purpose : [D. § 1. C. B., s. 3. B. B., s 3 ("raiyat" and "land.")]

Provided that a person shall be deemed to hold as a raiyat any *bastu* or homestead land included in the same holding with other land held by him as a raiyat.

*Explanation.*—A person may hold land for a purpose mentioned in this clause though he has sub-let it.

(6) "Under-raiyat" means a tenant holding land whether immediately or mediately below a raiyat.

(7) "Bastu holding" means bastu or other homestead land held by a tenant having the right provided for by Chapter VII. New.

(8) "Tenant" does not include any person who is not a tenure-holder, raiyat or under-raiyat, or the tenant of a bastu holding. New.

(9) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

(10) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant. [D. § 1. C B., s. 3. B B., s. 3.

(11) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery." See s. 230]

(12) "Arrear" means an instalment, or part of an instalment, of rent which is not paid before sunset of the day on which it is payable. [D. § 101. C B, s 56. B. B., s. 48.]

(13) "Holding" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions.

(14) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysáck, and where the Faslí or Amlí year prevails, the year commencing on the first day of Asin.

(15) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa made in the year 1793. [D § 20 & 37. C. B., ss. 6 & 16 B. B., ss. 6 & 15]

(16) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

(17) "Succession" includes both intestate and testamentary succession.

(18) "Bihár" means all the districts of the Patna Division, and such district or parts of districts of the Bhágalpur Division as the Lieutenant-Governor of Bengal may from time to time, by notification in the official Gazette, declare to be included in Bihár for the purposes of this Act. [B. B., s. 3]

(19) "Signed" includes "marked" when the person making the mark is unable to write his name ; it also includes "stamped" with the name of the person referred to. [C. B., s 3. B. B., s. 3]

(20) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

(21) "Collector" means the Collector of a District or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act.

(22) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision.

4. Nothing in this Act shall affect— [D. § 2. C. B., s 4. Report of Rent Commission, § 3. B. B., s. 4.]

Saving of custom, special law, &c.

(a) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions ;

(b) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act ;

(c) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the revenue-authorities ;

(d) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue ;

(*e*) any enactment relating to the partition of out revenue-paying estates ;

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act ; or

(*g*) any incident of a ghátwálí or other service tenure.

*Illustration.*

[C. B., s. 19, Expl. 4 (*f*). B. B., s. 19, Expl. 4 (*e*), proviso.]

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

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## CHAPTER II.

### Of the distinction between Khámár and Raiyatí land.

Khamar land defined.

5. "*Khamar land*" means—

[C. B., s. 81. B. B., ss. 3 & 75.]

*1st*, land situated elsewhere than in Bihár which a proprietor has held, whether under the name of khamar, nij-jote, ser or otherwise, as his private land for twelve continuous years before the commencement of this Act, and

*2nd*, land situate in Bihár which—

(*a*) is recognized as zeraat by a village custom established before the commencement of this Act : or

(*b*) is proved to have been held by a proprietor as zeraat for twelve continuous years immediately before the commencement of this Act.

All other land to be raiyatí.

[B. B. ss. 3, 19 & 75.]

6. All land which is not khámár land of some estate shall be deemed to be raiyatí land, and all land shall be presumed to be raiyatí land until the contrary is proved.

Power to order survey and register of khámár lands.

[B. B., s. 76.]

7. The Local Government may direct that a survey and register shall be made of all khámár land situate in any district or part of a district.

Mode of making survey.

[B. B., s. 77.]

8. The survey shall be made by the Collector or by an officer authorized by the Collector in that behalf, under such rules as may from time to time be prescribed by the Local Government for the conduct of such surveys ; and the Collector or such officer may exercise any of the powers conferred upon a Collector by the Bengal Survey Act of 1875, except the powers in Part IV of the said Act relating to the apportionment and recovery of expenses.

V. (B. C.) of 1875.

Publication of register.

[B. B., s. 78.]

9. The Collector shall make a register, in such form as the Local Government may from time to time prescribe, of such lands in each village as he may ascertain to be khámár lands within the meaning of the definition contained in section five ; and copies of that register shall be published in such manner as the Local Government may direct.

Appeals.

[B. B., s. 79.]

10. (*1*) Any person dissatisfied with any entry in the register may appeal to the Commissioner within one month after the publication ; and the Commissioner shall make such enquiry as he considers necessary, and may direct the register to be amended in such manner as he thinks fit.

(*2*) An appeal shall lie to the Board of Revenue from any order passed by the Commissioner order this section, if preferred within one month from the date of the order.

Submission of register to Board of Revenue and Local Government.

[B. B., s. 80.]

11. If no appeal is preferred to the Commissioner, or after such appeals as have been so preferred have been disposed of, the Commissioner shall submit to the Board of Revenue a copy of the register, with a report showing how the survey and register have been made ; and, if the Board are satisfied that the register is correct, they shall transmit the same to the Local Government for its approval.

Approval of register.

[B B., s. 81.]

12. If the Local Government approves the register, it may direct that its approval of the same be notified in the official Gazette ; Provided that its approval shall not in any case be given until after three months from the date of the publication under section nine.

Consequence of notification of approval.

[B. B., s. 82.]

13. When the approval of a register by the Local Government has been notified under section twelve, all land entered in the register shall, notwithstanding anything in the foregoing sections, be deemed to be khámár land, and all other land situate in the local area for which the register has been prepared shall, notwithstanding anything as aforesaid, be deemed to be raiyatí land.

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## CHAPTER III.

### Of Tenure-holders generally.

#### *A.—Of the Right to hold at fixed rents.*

Land held at rent unchanged since Permanent Settlement not liable to enhancement.

[D. §§ 20 & 37. C. B., ss. 6 & 16 B. B., ss. 6 & 16]

14. Where land has been held by a tenant and his predecessors in interest at a rent which has not been changed from the time of the Permanent Settlement, then, subject to the provisions of this Act, the rent shall not be liable to enhancement, and the tenant shall be deemed to be a tenure-holder for the purposes of this Act.

Presumption from twenty years' holding at unchanged rent.

15. Where land has been held by a tenant and his predecessors in interest at a rent which has not been changed for twenty years, then, subject to the provisions of this Act, it shall be presumed, until the contrary is shown, that it has been held by them at that rent from the time of the Permanent Settlement. [D. §§ 21 & 38. C. B., ss. 6 & 17 B. B., ss. 6 & 16.]

Application of sections 14 and 15 when rent is paid in kind.

16. When a tenant has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent shall not be deemed to have been changed within the meaning of sections fourteen and fifteen merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted to a fixed money-rent. [D. § 38. C. B., s 16, Expl. I. B. B., s. 15, Expl. I.]

Effect of separation or amalgamation of holding.

17. The operation of the foregoing sections of this chapter shall not be affected by the fact of land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding. [D. §. 37. C. B., s. 16, Expl II. B B., s. 15, Expl II.]

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

18. (1) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof— [D. §. 19. C. B., s. 7. B B., s. 7.]

(a) that the landlord under whom it is held is entitled to enhance the rent thereof under by the special custom of the district, or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(2) A reduction of rent granted to a tenure-holder, on account of diluvion or land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies, shall not be deemed a reduction within the meaning of this section.

Saving as to land held under terminable agreement.

19. Nothing in the foregoing sections of this chapter shall apply to land held under a terminable agreement. [D. § 20. C. B., s 6. B B., s. 6.]

Saving as to land held in a district not permanently settled.

20. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in the foregoing sections of this chapter shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements. [C. B., ss. 6, Excep., & 17, Exception. B B., ss. 6, Excep., & 16, Exception.]

*B.—Of the enhancement of rent.*

Limits of enhancement of rent of tenures.

21. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity. [D. § 23 C. B., ss 9 & 12 B B., ss. 9 & 10.]

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable under sub-section two, the Court shall not, except as provided in sub-sections four and five, leave the tenure-holder as profit more than thirty per centum or less than ten percentum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting those rents.

(4) If more than half the land included in the area of the tenure was unreclaimed at the time when the tenure was created, and if the reclamation of the unreclaimed land was one of the objects of the creation of the tenure, and that land was reclaimed accordingly, the Court, in determining what is fair and equitable under sub-section two, shall not leave the tenure-holder as profit less than twenty per centum of the balance mentioned in sub-section three, and may leave him as profit any share of that balance whether it exceeds thirty per centum thereof or not.

(5) If, in any case to which sub-section four does not apply, the tenure-holder has made improvements on the land, the Court, in determining what is fair and equitable under sub-section two, may leave him as profit any share of the balance mentioned in sub-section three it thinks fit, provided it be not less than ten per centum of the balance.

(6) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Enhanced rent not to be more than double the previous rent.

22. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under section 21 shall not be more than double the rent previously payable. [C B., s.10 (a). B B., s. 11(a)]

Power to order gradual enhancement.

23. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached. [C.B., s 10 (a). B. B., s.11(b)]

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[C B., s.10(b). B. B., s.11(c).]

Rent once enhanced may not be altered for ten years.

24. When the rent of a tenure-holder has been enhanced under section 21 or by contract, it shall not be again enhanced under that section during the ten years next following the date on which it has been so enhanced.

*C.—Of the Incidents of permanent tenures.*

[C B., s. 13. B B., ss. 12 & 17.]

Incidents of permanent tenures generally.

25. Every permanent tenure shall, subject to the provisions of this Act in respect of registration, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Permanent tenure-holder not liable to ejectment.

26. A holder of a permanent tenure shall not be ejected by his landlord except under a decree of a Civil Court passed in accordance with this Act on the ground that he has broken a condition on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected.

*D.—Of the registration of transfers of, and succession to, permanent tenures.*

[D. § 25. C. B., s 46. B. B., s. 37.]

Landlord bound to register voluntary transfer or succession on application.

27. (*1*) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by a summary sale under Chapter IV) or a succession to such a tenure takes place, the landlord shall, subject, in the case of a patní tenure, to the provisions of section 39, register the same on application made to him by the transferor and transferee, or by the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed.

[D. § 27. C. B., ss. 47, 49. B. B., ss. 39 41].

(*2*) The fee payable on an application under this section shall be as follows, namely :—

(*a*) When the application is made not more than six months from the date of the transfer or succession, a fee of two per centum upon the annual rent of the tenure : provided that no such fee shall be less than one rupee or more than one hundred rupees.

(*b*) When the application is made more than six months from the date of the transfer or succession, a fee of twenty per centum upon the annual rent of the tenure : provided that no such fee shall be less than ten rupees or more than one thousand rupees.

(*3*) When a landlord refuses to comply with an application for registration, made as required by sub-section one, he shall deliver to the applicant a statement in writing of the reasons for his refusal.

Application may be served through Revenue-officer.

28. (*1*) An application for the registration of a transfer of or succession to a tenure may, instead of being made to the landlord under section 27, be made to such Revenue-officer as the Local Government may from time to time appoint in this behalf; and, on its being so made, and on the fee payable under section 27 being paid to the officer, he shall cause a notice to be served on the landlord, requiring him to register the transfer or succession, and informing him that the fee has been received and will be paid to him on demand when the registration has been effected.

(*2*) A landlord on whom a notice is served under this section shall, subject in the case of a patní tenure to the provisions of section 39, be bound to comply forthwith with the requisition therein contained.

[C.B., ss. 47, 48 (c). B B., ss. 39, 40 (c).] XIV of 1882.

Registration in case of transfer by sale in execution of decree other than decree for rent.

29. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 314 of the Code of Civil Procedure, require the purchaser to pay into Court the registration fee prescribed by section 27, clause (*a*), and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 35.

(*2*) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall be bound to comply with the requisition forthwith.

Registration in case of transfer by sale in execution of decree for rent or by summary sale

30. When a permanet tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under Chapter IV, the landlord shall be bound to register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

[D. § 10. C B., ss. 46, 48 (a), 49. B B., ss 37, 40 (a) and 41.]

Effect of omission to register voluntary transfer.

31. When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree or by summary sale under Chapter IV) has taken place, the landlord may, until the transfer has been registered under section 27, or a Revenue-officer has ordered a notice to be served under section 28, hold the transferor and transferree jointly and severally liable for arrears of rent accruing subsequent to the transfer.

[C. B., s. 52. B. B., s. 44 ]

Application to Court to compel landlord to register.

32. (*1*) When a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or as the case

may be, the person succeeding, may apply to any Civil Court having jurisdiction in the local area within which the land is situate to compel such registration.

(2) The Court to which an application is made under sub-section one may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

(3) If no cause as aforesaid is so shown, the Court may make an order directing the landlord to register the transfer or succession, and the order so made shall have the force of a decree in a suit.

Application by landlord to compel registration.

33. (1) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under Chapter IV) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to any Civil Court as aforesaid to compel the parties to the transfer, or the person succeeding, as the case may be, to consent to its registration and pay the fee mentioned in section 27, clause (b). [C. B., ss. 50 and 51. B. B., ss. 42 and 43.]

(2) The Court to which an application is made under sub-section one may issue a notice calling upon the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why they or he should not consent to the registration and pay the fee.

(3) If no cause as aforesaid is so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee; and the order so made shall have the force of a decree in a suit.

Landlord to give copies of entries in the register.

34. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive free of charge from the landlord on demand a copy of the entry in the register relating to the tenure, certified under his hand as a true copy, and to receive from time to time in like manner as many additional copies as he may demand: provided that for every such additional copy he shall pay to the landlord such fee, not less than *eight annas* or more than *five rupees*, as the Board of Revenue may from time to time fix in this behalf. [C. B., s. 54. B. B., s. 46.]

Power to make rules regarding registration.

35. (1) The Board of Revenue may from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and determine the mode in which, and the place at which, applications are to be made under section 27, and generally the procedure to be followed in regard to registration. [C. B., s. 54. B. B., s. 46.]

(2) In making any rule under sub-section one the Board may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees.

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## CHAPTER IV.

### Of Patní Tenures.

Definition of patní tenure.

36. "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatní and other similar under-tenures referred to in that schedule. [D. § 26. C. B., ss. 14 & 15. B. B., ss. 13 & 14.]

Incidents of patní tenures.

37. (1) Every patní tenure shall be deemed to be a permanent tenure. [D. § 26. C. B., s. 14. B.B., s. 13.]

(2) The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

Right of landlord of patní tenure to demand security from transferee.

38. When a patní tenure is transferred, whether voluntarily or by sale in execution of a decree, or by summary sale under section 42, the landlord may require the transferee to furnish substantial security, to the amount of one half year's rent of the tenure, for the payment of the rent and the fulfilment of the other conditions of the tenure. [D. § 27. C. B., s. 53 (a). B.B., s. 45 (a).]

Landlord may refuse registration of voluntary transfer when security is not given.

39. When a patní tenure is transferred otherwise than by sale in execution of a decree, or by summary sale under section 42, the landlord may refuse to register the transfer under Chapter III of this Act until the security required under section 38 is furnished. [D. § 28. C. B., s. 53 (a). B.B., s. 45 (a).]

Landlord may attach tenure sold in execution or by summary sale when security is not given.

40. (1) In the case of a transfer by sale in execution of a decree, or by summary sale under section 42, if security is demanded by the landlord from the purchaser under section 38, and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished. [D. § 29. C. B., s. 53 (b). B. B., s. 45 (b).]

(2) While an attachment under this section continues, the landlord may collect the rents from the undertenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

(3) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same.

[D. § 28. C.B., s. 53 (b). B B., s. 45 (c)]

Application to Civil Court, if security tendered is refused.

41. (1) If the security tendered under section 38 by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application.

(2) No appeal shall lie from any order under this section.

[D § 135. C.B., s. 133. B.B., s. 147.]

Recovery of arrears by summary sale.

42. If default is made in payment of the rent due in respect of a patní tenure, held immediately from a proprietor, the landlord may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules for the sale of patní taluqs at the instance of zamíndárs, contained in Schedule III annexed to this Act:

Provided that nothing in those rules shall entitle a purchaser at any such sale to eject an occupancy-raiyat or cancel any contract entitling him to hold at a rent which was fair and equitable at the time the contract was made.

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## CHAPTER V.

### Of Occupancy-raiyats generally.

[B.B., s. 19, Expl. II]

Interpretation.

43. For the purposes of this chapter—

(a) "village" means an area included in a village-map of the revenue-survey within the same exterior boundary, and, where no such maps have been prepared, such area as the Local Government or any officer appointed by the Local Government in this behalf may determine; and

(b) where two or more estates have been created by one or more partitions taking place since the first day of January, 1853, the area comprised in the parent estate of which they would have formed part if no such partition had taken place, shall be deemed to be a single estate.

[B B., s. 19 (1), & Expl. IV (e), proviso.]

Present occupancy-raiyats to become occupancy-raiyats under Act.

44. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment, by custom having the force of law, or otherwise, a right of occupancy in any land shall, when this Act comes into force, become, for the purposes of this Act, an occupancy-raiyat of that land.

Acquisition of status of settled raiyat of village or estate

45. (1) Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

(2) A person shall be deemed for the purposes of this section to have held as a raiyat any raiyatí land held as a raiyat by a person whose heir he is.

(3) Raiyatí land held by two or more co-sharers as a raiyatí holding shall be deemed for the purposes of this section to have been held as a raiyatí holding also by each such co-sharer.

Loss of status of settled raiyat.

46. If a settled raiyat of a village or estate has ceased for a period of one year, whether before or after the commencement of this Act, to hold raiyatí land as a raiyat in that village or estate, either alone or as a co-sharer with others, he shall be deemed to have ceased, on the expiration of that period, to be a settled raiyat of that village or estate.

Settled raiyat to have occupancy-right in raiyatí land held by him in village or estate.

47. Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force:

[D § 40, Expls I & V. C B., s. 19, Expl. IV. B. B., s 19 Expl. IV (d).]

Provided that a person shall not acquire a right of occupancy under this section in respect of any land held by him alone as owner, tenure-holder or ijáradár.

Acquisition of occupancy-right by grant.

48. (1) A proprietor or permanent tenure-holder, from whom a person takes land as a raiyat, or immediately under whom a person holds land as a raiyat, may grant to that person an occupancy-right in respect of that land.

(2) An occupancy-right granted under this section shall be deemed to be an occupancy-right within the meaning of this Act.

[D. § 40, Expl. V. C. B, s. 19, Expl. 3 (d), Expl. (4) (g). B B., s. 19, Expl. III (b), Expl IV (f).]

Acquisition of occupancy-right in khámár land.

49. (1) Every person who, for a period of twelve years ending after the commencement of this Act, has held khámár land as a raiyat shall, unless he has held it for any portion of that period under a lease for a fixed period, acquire a right of occupancy in that land.

(2) The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat for the purposes of this section.

50. When a raiyat has an occupancy-right in respect of any land, the following provisions shall, notwithstanding any contract between him and his landlord to the contrary, apply, namely :—

Incidents of occupancy-right generally.

(*a*) he may use the land in any manner which does not render it unfit for the purposes of the tenancy : [B. B., s 69.]

(*b*) he may make improvements on the land as by this Act provided : [C. B., s. 77. B. B., s. 69.]

(*c*) he shall pay rent at fair and equitable rates determined as by this Act provided : [D. § 42. B.B., s. 21(*d*).]

(*d*) he shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed in accordance with this Act on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected : [C. B., s 20 (*e*). B. B., ss. 21 (*e*), 31, 69 (*a*).]

(*e*) he may sub-let the land or any part thereof : [D. § 40, note 7. B. B., s. 71.]

(*f*) his interest in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred, and bequeathed by will in the same manner and to the same extent as other immoveable property : [C. B., s. 20 (*a*), (*b*) and (*d*). B. B., s. 21 (*a*) and (*b*).]

(*g*) his interest in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property : provided that, in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his interest in the land shall go to his landlord. [D. § 41, note 9. C. B., s. 20 (*c*). B. B., s. 21 (*c*).]

51. (*1*) When an occupancy-raiyat intends to sell his occupancy-right to any person other than the landlord, he shall file in the office of the Collector, or of the officer in charge of the sub-division, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, and shall defer proceeding with the sale for one month from the date on which he files the notice.

Landlord's right of pre-emption on voluntary sale of occupancy-right.

(*2*) The officer in whose office the notice is filed shall forthwith cause it to be served on the landlord.

(*3*) The landlord may, within the period of one month from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of one month ; and, if the landlord so claims, the raiyat shall sell the right to him accordingly.

(*4*) If a raiyat sells his right of occupancy in contravention of this section, the landlord may, within six months from the date of the sale, claim to purchase the right from the purchaser or any other person into whose hands it may have passed at a price ten per centum below its estimated value, and, if the landlord so claims, the purchaser or that person, as the case may be, shall sell the right to him accordingly.

52. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord. Act XIV of 1882, s. 310.

Landlord's right of pre-emption on sale in execution.

53. (*1*) Where a right of occupancy has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice. IV of 1882.

Landlord's right to take the place of mortgagee on foreclosure.

(*2*) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord.

(*3*) An order absolute passed under sub-section two shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit.

54. (*1*) When an occupancy-raiyat makes a gift of his occupancy-right to any person other than his landlord, he shall forthwith file in the office of the Collector, or of the officer in charge of the sub-division, for service on the landlord, a written notice of the gift, stating the person to whom he has made it.

Landlord's right to purchase in case of gift of occupancy-right.

(*2*) The officer in whose office the notice is filed shall forthwith cause it to be served on the landlord.

(*3*) The landlord may, within the period of one month from the date on which the notice is filed, claim to purchase the right from the donee, or any other person into whose hands it may have passed, at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of one month, and, if the landlord so claims, the donee or other person as aforesaid shall sell the right to him accordingly.

(*4*) If a raiyat makes a gift of his occupancy-right, and does not comply with the provisions of this section, the landlord may, within six months from the date on which the gift is made, claim to purchase the right from the donee, or any other person into whose hands it may

have passed, at a price ten per centum below its estimated value; and, if the landlord so claims, the donee or that person, as the case may be, shall sell the right to him accordingly.

Landlord's right to purchase where occupancy-right is bequeathed.

55. When an occupancy-raiyat dies, and any person, other than a person to whom, if the raiyat had died intestate, the occupancy-right would have descended, acquires that right under a bequest made by the raiyat, the landlord may within the period of six months from the date on which the right is so acquired, claim to purchase the right from the legatee, or any other person into whose hands it may have passed, at such price as may be agreed upon betweem them, or, if they cannot agree upon a price, at such price as the Civil Court may, on the application of the landlord, made within the said period of six months, fix in this behalf, and if the landlord so claims the legatee or other person as aforesaid shall sell the right to him accordingly.

Raiyat of land of which landlord has acquired occupancy-right to be an occupancy-raiyat.

56. Notwithstanding any contract to the contrary, when the landlord of an occupancy-raiyat acquires, under the foregoing sections or otherwise, the occupancy-right in any of the land comprised in the holding, any person thereafter holding the land as a raiyat shall have a right of occupancy in respect of it, and, if immediately before the acquisition of the right by the landlord the rent of the land was a money-rent, shall be entitled to hold at a money-rent fixed in accordance with the provisons of this Act.

Acquisition of status of settled raiyat by succeeding to occupancy-right.

57. Every person succeeding by way of intestate succession to the occupancy-rights, or any share of the occupancy-rights, of a settled raiyat of a village or estate, in respect of any land situate in that village or estate, shall become a settled raiyat of the village or estate:

Provided that when a person so succeeding holds as a raiyat at the time when he so succeeds other land in the same village or estate, he shall not, merely by reason of becoming a settled raiyat of the village or estate under this section, acquire, under section 47, an occupancy-right in that other land.

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## CHAPTER VI.

### Of the Rent payable by Occupancy-raiyats.

#### (*A*).—*Of money-rents generally.*

[D. § 42. B. B., s. 21 (*d*).]

Existing money-rents payable until altered as herein provided.

58. A money-rent payable by an occupancy-raiyat shall be presumed to be fair and equitable, and shall continue to be paid by him until it is enhanced under this Act or reduced.

Enhancement of money-rents by contract.

59. (*1*) A money-rent payable by an occupancy-raiyat may be enhanced by a contract in writing approved of, and registered by, a Revenue-officer appointed by the Local Government in this behalf.

(*2*) A Revenue officer shall not, under this section, approve or register any contract by which a raiyat engages to pay a rent more than *six* annas per rupee greater than that previously payable, or more than one-fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time, or any contract, until he has satisfied himself that it is fair and equitable, and that the raiyat in entering into it acts as a free agent.

[B. B., s. 21 (*d*).]

Money-rents not enhanceable except as provided.

60. Except as provided by section 59, or on account of an addition to the area of the holding by alluvion or otherwise, a money-rent payable by an occupancy-raiyat shall not be enhanced otherwise than by a decree passed under this chapter.

Limit of money rent payable by settled raiyat taking new holding.

61. (*1*) When raiyatí land which has previously been held by a tenant at a money-rent is let to a settled raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay therefor any rent higher than that which was paid by the previous tenant, unless the higher rent has been fixed by a contract in writing, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf.

(*2*) A Revenue-officer shall not under this section approve of or register any contract by which a raiyat engages to pay a rent more than one-*fifth* of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time, or any contract, until he has satisfied himself that it is fair and equitable, and that the raiyat in entering into it acts as a free agent.

#### *B.—Of the preparation of a table of rates and produce, and of suits to enhance money-rents where such a table is in force.*

[B. B., ss. 131 & 132.]

Power to direct preparation of table.

62. The Local Government may, by an order in the official Gazette, direct a Revenue-officer to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land and the average value of that produce.

Contents of table.

63. The table shall specify—

[B B., s 133.]

(*a*) the several classes of land for which, having regard to the nature of the soil, situation,

means of irrigation and other like considerations, it is necessary to fix different rates of rent;

(*b*) the rate, or the maximum and minimum rates, of rent fairly and equitably payable by occupancy-raiyats holding land of each such class; and

(*c*) the estimated average amount, or the maximum and minimum estimated average amounts, of the gross produce in staple crops of land of each such class, and the estimated average value or values of that produce.

Principle on which rent-rates are to be fixed.

64. In fixing the rate of rent for any class of land under section 63 regard shall be had— [B B., s. 133]

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;

(*b*) to the value of the average annual gross produce of land of that class and the cost of raising such produce about the time at which those rates were fixed, or, if that time or the value and cost about that time cannot readily be ascertained, to the value of the average annual gross produce and the cost of raising such produce about any other time which it may appear equitable to take for the purpose of comparison;

(*c*) to the value of the average annual gross produce of land of that class and the cost of raising such produce at the time at which the table is prepared; and

(*d*) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the value of the average gross produce of land of that class, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value: [C. B, s 23 (*b*). B. B., s. 24 (*b*).]

Provided that the rate fixed for any class of land shall not in any case exceed one-fifth of the estimated average annual value of the gross produce in staple crops of land of that class, calculated at the price at which raiyats sell at harvest-time. [C. B, s. 23 (*c*). B. B, s. 24 (*c*).]

Local publication of the table.

65. When the Revenue-officer has prepared the table, he shall publish it in the local area to which it relates in the vernacular language prevailing in that local area, in such manner as the Board of Revenue may from time to time prescribe. [B B., s. 137]

Revenue-officer to deal with objections.

66. Any person objecting to any entry in the table may present a petition to the Revenue-officer within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table. [B. B., s. 138.]

Table to be submitted to superior Revenue-authorities.

67. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received, through the Commissioner of the Division, to the Board of Revenue for approval. [B. B., s 139.]

Proceedings of Board of Revenue thereupon.

68. The Board of Revenue may amend the table submitted under section 67 in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry. [B. B., s. 140]

Publication of table after final sanction.

69. When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which may amend the same in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies. [B.B, s. 141.]

Period for which table remains in force.

70. A table for any local area published under section 69 shall come into force on the date on which it is so published, and shall continue in force for such period, not less than ten or more than thirty years, as the Local Government at the time of publication may direct. [B B., s 142.]

Table to be conclusive evidence.

71. The publication of a table under section 69 shall be conclusive evidence in any proceeding under this Act— [B B., s. 142]

(1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act:

(2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies:

(3) that the average gross produce of land of any class, and the average value thereof, are in accordance with the gross produce and the value specified in regard to that class in the table.

Expenses incurred in preparing table how defrayed.

72. All expenses incurred by the Government in preparing a table of rates and produce for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupancy-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

[B B, s. 144.]

Suit to enhance where table is in force.

73. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area, held by an occupancy-raiyat at a money rent, may, subject to the provisions of section 78, institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court shall enhance the rent in accordance with the rates shown in the table, or, where for any class of land a maximum and a minimum rate are entered in the table, to such rate, not higher than the maximum and not lower than the minimum, as it thinks fit: Provided that—

*1st.*—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely:—

[D § 43. C B, s 22, cls. (3) and (4). B. B, s 23, cls. (3) & (4).]

(*a*) if the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate;

(*b*) if the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

[C B., s. 23, cl (*a*) B B, s. 24, (*a*)]

(*c*) if it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

[B B., ss. 24 (*c*), 142, proviso.]

*2ndly.*—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

*Illustrations.*

(*a*) The rates shown in the table for land of a certain description are—

| | |
|---|---|
| when the land is irrigated from a well . . . . . | Rs. 4 per acre. |
| when the land is not so irrigated . . . . . | „ 2 „ |

The holdings of *A*, *B*, *C* and *D*, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2. and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows:—

| | |
|---|---|
| when such land is irrigated from a branch of a river . . . | Rs. 4 per acre. |
| when such land is not so irrigated . . . . . | „ 2 „ |

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and where not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

*C.—Of suits to enhance money rents where a table of rates and produce is not in force.*

[D. § 43 (1) and (2). C B, s 22 (1), (3) and (4) B. B., s. 23 (1), (3) and (4)]

Grounds on which landlord may sue to enhance where table is not in force.

74. (*1*) The landlord of a holding held at a money rent by an occupancy-raiyat and situate in a local area for which a table of rates and produce, prepared under the foregoing sections, is not in force, may, subject to the provisions of section 78, institute a suit to enhance the rent on one or more of the following grounds, namely:—

(1) that the rate of rent paid by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity;

(2) that the productive powers of the land held by the raiyat, as compared with those powers at the time when the rent was fixed, or when that time or the productive powers at that time cannot readily be ascertained, with the productive powers at any other time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the sole agency or at the sole expense of the raiyat or his predecessor in interest and from causes not merely temporary or casual; and

(3) that the average prices of produce in the locality, or at the usual markets, as compared with similar prices about the time when the rent was fixed, or, when that time or the prices prevailing about that time cannot readily be ascertained, with the similar prices about any other time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the sole agency or

at the sole expense of the raiyat or his predecessor in interest, and from causes not merely temporary or casual.

(2) Nothing in this section shall affect any contract binding a landlord not to enhance the rent of a tenant. [B. B., s. 24 (e).]

*Illustrations of Ground* (1).

(a) A's paternal grandfather seventy years ago reclaimed the land which A, an occupancy-raiyat, now holds, and which came to him by inheritance from such paternal grandfather. B is an occupancy-raiyat who holds land which was in a culturable state when B was first let into possession thereof. There is evidence that the hereditary descendant of a raiyat who, being the first settler, reclaimed the land has a special privilege. A and B are not raiyats of the same class.

(b) A is in possession of a holding which has descended to him from his great-grandfather, who held it at the time of the Permanent Settlement. B was let into possession of his holding twenty years ago. There is evidence that the descendants of raiyats who were in possession at the time of the Permanent Settlement customarily hold at rates less than raiyats who have come into possession at a later period. A and B are not raiyats of the same class.

Rules for enhancement under section 74.

75. All enhancements of rent on the second or third of the grounds specified in section seventy-four shall be subject to the following rules, namely :— [C. B., s. 23 (a), (b) and (c). B. B., s. 24 (a), (b) and (c).]

(a) If the increase of the productive powers of the land, or of the prices of produce, has been effected wholly by the agency or at the expense of the landlord or his predecessor in interest, the landlord shall be entitled to the whole benefit of the increase:

(b) If the increase has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the benefit shall be divided between the landlord and the raiyat in such shares as the Court, having regard to all the circumstances of the case, thinks fair and equitable :

(c) If it is not proved that the increase has taken place by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, each shall be entitled to one-half of the benefit: Provided that in any such case the enhanced rent shall not bear to the rent previously payable a higher proportion than the increased productive powers or increasd prices bear (as the case may be) to the former productive powers or former prices :

(d) The enhanced rent shall not in any case exceed one-*fifth* of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time.

*D.—Rules applicable to suits to enhance money rents generally.*

No enhancement beyond double the rent previously payable.

76. The rent of a holding shall not be enhanced in a suit under any of the foregoing sections of this chapter so that the enhanced rent shall be more than double the rent previously payable. [C. B., s. 23 (b). B. B., s. 24 (b)]

Power to order progressive enhancement.

77. When a Court passing a decree for enhancement under any of those sections considers that the immediate enforcement of the decree in its full extent would be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement decreed has been reached. [C. B., s. 23 (d). B. B., s. 24 (d)]

Rent enhanced or commuted not enhanceable for 10 years.

78. When the rent of an occupancy-holding has been enhanced by a decree under any of those sections or under any enactment repealed by this Act, or by contract, or has been commuted under section 82, a suit for its enhancement shall not be instituted under this chapter within the ten years next following the date on which it has been so enhanced or commuted, except on the ground that since the rent has been so enhanced or commuted an improvement has been made by the landlord which, but for this section, would entitle him to an enhancement. [B. B., s. 143.]

*E.—Of suits for the reduction of money rents.*

Occupancy-raiyat when entitled to reduction of rent.

79. (1) An occupancy-raiyat holding at a money rent may, notwithstanding any contract to the contrary, institute a suit for the reduction of his rent on either or both of the following grounds, and except as provided by section 96, not otherwise, namely :— [D. § 47 C. B., s 25 (2) and (3). B. B., s. 25 (2) & (3).]

(a) on the ground that the productive powers of the land, as compared with those powers at the time when the rent was fixed, or, when that time or the productive powers at that time cannot readily be ascertained, with the productive powers at any other time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the raiyat's control, and not merely temporary or casual;

(b) on the ground that the average prices of produce in the locality or at the usual markets, as compared with similar prices about the time when the rent was fixed, or, when that time or the prices prevailing about that time cannot readily

be ascertained, with the average prices prevailing about any other time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the raiyat's control, and not merely temporary or casual.

(2) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

*F.—Special rules regarding money rents payable for pasture lands.*

[C. B., s. 22, Expl. II. B. B., s. 23, Expl. II, & s. 24 (e).]

Special rules for pasture lands.

80. (1) Sections 62 to 79, both inclusive, shall not apply to land fit to be used, or which in accordance with local usage is used, only as pasture; but when such land is held at a money rent by an occupancy-raiyat, the landlord may, subject to any contract between the parties, institute a suit to enhance the rent on the ground—

(a) that the rate of rent payable by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity, or

(b) that, having regard to the increase of rent on arable land in the vicinity since the rent payable by the raiyat was fixed, it is reasonable to enhance that rent.

(2) Where an enhancement is applied for on the ground mentioned in clause (b), the Court shall fix the rent at such rate as it thinks fair and equitable.

*G.—Of rents payable in kind or varying with the crop.*

[C. B., s. 2. B. B., s. 22.]

Limit to amount of rent payable in kind or varying with crop.

81. (1) Where an occupancy-raiyat pays rent in kind, or pays as rent the value of a certain share of the actual gross produce, the following rules shall apply, namely :—

(a) notwithstanding any contract or custom to the contrary, the landlord shall not be entitled to recover, in respect of any portion of the holding on which staple crops are grown, more than half the gross produce or its value, as the case may be;

(b) the landlord shall not, except under a contract in writing, be entitled to recover, in respect of any portion of the holding on which other crops are grown, any other description or any greater amount of rent than a sum equal to one-half of the estimated average value of the produce of that portion of the holding if staple crops were grown on it.

(2) Nothing in this section shall prevent a landlord recovering the value of any seed, labour or other assistance he may have contributed towards the production of the crop.

[C. B., s. 86. B. B., ss. 90 and 92.]

Commutation of rents.

82. (1) An occupancy-raiyat whose holding consists of raiyati land, and who pays rent in kind, or pays as rent the value of a certain share of the actual gross produce of the holding, may, notwithstanding any contract to the contrary, sue to have his rent commuted into a money-rent.

(2) The money-rent shall be fixed at the discretion of the Court—

(a) according to the prevailing money-rent payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity, or

(b) according to the average value of the rent actually received by the landlord during the preceding five years.

(3) When a money-rent is fixed under clause (b), a reasonable deduction shall be made by the Court from the average value aforesaid in consideration of the whole risk of cultivation being taken by the raiyat.

*H.—Supplementary provisions.*

[C. B., s. 122 B. B., s. 145.]

Collectors to prepare annual price-lists of staple crops.

83. (1) The Collector of every district shall prepare annually lists of the market-prices at harvest-time of staple crops grown in such local areas as the Board of Revenue may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette under the signature of one of the Secretaries to the Board.

(3) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at harvest-time in the year to which it relates.

[C. B., ss. 120, 122 and 23(c). B. B., ss. 134, 145 and 24 (c).]

Power to make rules.

84. The Board of Revenue may from time to time, subject to the approval of the Local Government and to the control of the Governor General in Council, make rules—

(a) for the guidance of officers engaged in the preparation of tables of rates and produce under this chapter;

(b) for the guidance of officers engaged in the preparation of price-lists under section 83;

(c) determining what crops shall be deemed to be staple crops for the purposes of this chapter in any local area;

(*d*) for the guidance of Revenue-officers registering contracts under section 59 and section 61.

(*e*) for the guidance of Revenue-officers and Courts in estimating the average annual value of the gross produce of land for the purposes of sections 59 and 61 and section 75, clause (*d*).

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## CHAPTER VII.

### Of the Right of a Settled Raiyat in Bastu Land.

Settled raiyat to have permanent right in *bastu* land.

85. (*1*) A person who is under Chapter V a settled raiyat of a village or estate as defined in that chapter shall, notwithstanding any contract to the contrary, have a right permanent, heritable and capable of being transferred and bequeathed, in any *bastu* or other homestead land in that village or estate which is not comprised in an occupancy-holding and which is held by him as the site of, or for the purpose of erecting, a dwelling-house suitable for himself and his family, together with all necessary out-offices.

(*2*) A person having a right under sub-section one in any land in a village or estate shall not lose that right merely by reason of his ceasing to be a settled raiyat of that village or estate.

Provisions regarding ejectment.

86. (*1*) Notwithstanding any contract to the contrary, a person having in respect of any land a right under section 85 shall not be ejected from that land except in execution of a decree for ejectment passed in accordance with this Act on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected, and, if he is so ejected, shall be entitled to compensation for any house or offices of the description referred to in section 85 which may have been erected on the land by him or his predecessor in interest whether before or after the commencement of this Act. [B B., s. 32]

(*2*) A Court passing a decree for the ejectment of such a person shall determine the amount of compensation (if any) due to him under sub-section one and shall make the decree conditional on the payment of that amount by the decree-holder.

Rule for enhancing rent.

87. When a person has in respect of any land a right under section 85, and the rent of the land has not been enhanced during the previous ten years, the landlord may, unless barred by any contract between the parties, enhance the rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or at his option so that it may be equal to five per centum of the market-value of the land. [C. B., s. 42 B. B., s. 33]

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## CHAPTER VIII.

### Of Ordinary Raiyats.

Ordinary raiyat defined.

88. Every person holding raiyatí land as a raiyat and not having a right of occupancy in respect of it shall be deemed to hold it as an ordinary raiyat.

Rents regulated by agreement.

89. An ordinary raiyat shall, subject to the provisions of section 119, pay such rent as may, from time to time, be fixed by agreement between him and his landlord.

Grounds on which an ordinary raiyat may be ejected from raiyatí land.

90. Notwithstanding any contract to the contrary, an ordinary raiyat shall not be ejected from raiyatí land by his landlord as such except— [C. B., s. 79 (5) B B., ss. 26, 72 (5)]

(*a*) as hereinafter provided for arrears of rent,

(*b*) in execution of a decree for ejectment passed in accordance with this Act on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected, or

(*c*) in execution of a decree for ejectment passed on the ground that he has refused to agree to an enhancement of rent demanded by his landlord in accordance with the provisions next hereinafter contained.

Notice of enhancement to be served through Civil Court.

91. When a landlord wishes to enhance, within the limit fixed by section 119, the rent of an ordinary raiyat holding raiyatí land at a money-rent not fixed for a term by agreement, and the raiyat does not agree to the enhancement, the landlord may cause to be served on the raiyat through the Civil Court a notice of the enhancement not less than six months before the commencement of the agricultural year in which the landlord desires the enhancement to take effect.

92. (*1*) If, within the period of one month from the service of a notice under section 91, the raiyat on whom the notice has been served presents to the Court issuing the notice a statement in writing declaring his willingness to pay the enhanced rent, he shall be deemed to have agreed to pay that rent from the commencement of the agricultural year next following.

Raiyat may agree to enhancement. If he does not, landlord may sue to eject.

(*2*) If the raiyat does not, within the said period of one month, present to the Court a statement as aforesaid, the landlord may, not less than ten weeks before the commencement of the agricultural year next following, institute a suit to eject the raiyat.

93. (*1*) If, in any suit instituted under section 92, the defendant appears and agrees to pay the enhanced rent demanded, his agreement shall thereupon be recorded, and he shall not be ejected, but shall be liable to pay that rent from the commencement of the agricultural year next following the date of the agreement.

Procedure in suit.

(*2*) If the defendant does not appear, or if, on appearing, he does not agree to pay the enhanced rent demanded, the Court may pass a decree for his ejectment on condition that, within fifteen days from the date of the decree, the landlord deposits in Court—

(*a*) such sum (if any) as may be declared by the decree to be payable to the raiyat as compensation for improvements; and

(*b*) a further sum as compensation for disturbance equal to *ten* times the yearly increase of rent demanded.

Decree when absolute

94. (*1*) If these sums are so deposited, the decree shall be made absolute, and the sums deposited shall be paid to the raiyat.

(*2*) If these sums are not so deposited, the decree shall become void, and the raiyat shall remain in occupation of his holding at the rent previously paid by him.

when to become void.

95. When a raiyat has agreed, under section 92 or section 93, to pay an enhanced rent for his holding, or a decree to eject him from the holding has become void under section 94, no notice shall be served on him under section 91 in respect of that holding during the ten years next following the date on which he has so agreed, or the decree has become void, as the case may be.

Fresh proceedings not to be taken for ten years.

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## CHAPTER IX.

### Provisions regarding Rent applicable to several classes of Tenants.

*A.—Of alterations of rent consequent on alterations of the area of the holding of a tenure-holder or occupancy-raiyat.*

[D §§ 19, 24, 43 (3) & 47. C B., ss 8 & 18, 22 (2) & 25 (1). B. B, ss 8, 18, 23 (2) & 25 (1)]

96. (*1*) Notwithstanding anything in Chapter III or Chapter VI, every tenure-holder shall, in the absence of a contract to the contrary, and every occupancy-tenant shall, notwithstanding any contract to the contrary,—

Additions to, and deductions from, rent in respect of alteration of area.

(*a*) be liable to pay additional rent for all land added to the area of his holding by alluvion or otherwise, unless he can show that the land has reformed on the site of land which was formerly included in that area, and for the loss of which he has had no abatement of rent; and

(*b*) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) The amount added to the rent shall be calculated at the rates payable by occupancy-raiyats for lands of a similar description and with similar advantages in the vicinity, less a deduction, in the case of a tenure-holder, of thirty per cent. for profits, risk and cost of collection.

(*3*) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

*B.—Instalments in which money-rents are payable by tenure-holders, raiyats and under-raiyats.*

[C B, s. 55 (*a*) B B., s 47 (*a*).]

97. A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and, in the absence of any agreement or custom, in such instalments and on such dates as the Board of Revenue may fix in this behalf for any local area.

Rent of tenure-holder in what instalments and on what dates payable.

98. A money-rent payable by a raiyat or under-raiyat shall, notwithstanding any contract or custom to the contrary, be paid in such instalments, and on such dates, not being more than four in each year, as the Board of Revenue may fix in this behalf for any local area: [C. B., s. 53 (b). B. B., s. 47 (b).]

Rent of raiyat or under-raiyat in what instalments and on what dates payable.

Provided that, when the instalments in which, and the dates on which, rent is payable are fixed by an agreement made before the commencement of this Act, or by a custom which has prevailed from before the commencement of this Act, the amount payable on each date fixed by the Board under this section for the payment of an instalment shall be equal to the aggregate of the instalments which would, under the agreement or custom, have fallen due since the date so fixed by the Board for the payment of the last previous instalment.

99. (1) Every order made by the Board of Revenue under section 97 or section 98 shall be made after a consideration of the prevailing customs and the time of harvest in the local area to which it is to apply. [B. B., s. 47 (b).]

Making and publication of orders under sections 97 and 98.

(2) Every such order shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

*C.—Of the Receipts and Accounts to be given to tenants.*

100. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him. [D. § 61 C. B., s 57. B. B, s. 49 (a) and (b).]

Tenant making payment to his landlord entitled to a receipt.

(2) The receipt shall specify—

(a) the date of payment;

(b) the amount paid on account of principal and interest respectively, or, where the payments are made in kind, the quantity and description of produce delivered;

(c) where other money recoverable under any enactment for the time being in force is paid with the rent, the amount so paid.

(d) the holding in respect of which the rent is paid;

(e) the name of the person (if any) registered in the landlord's serishta as the tenant;

(f) the annual rent payable for the holding and the amount of rent then in arrear; and

(g) the instalment and year an account of which the payment is declared by the tenant to be made, or, in the absence of any such declaration, the instalment and year on account of which it has been credited by the landlord.

(3) The landlord shall prepare and retain a counterpart of the receipt containing similar particulars.

(4) Every receipt which does not contain substantially the above particulars shall be deemed to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

101. (1) Every tenant shall be entitled to receive from his landlord, within three months after the expiry of each agricultural year, a statement of account for that year showing— [C. B., s. 51 (b). B B., s. 49 (c).]

Tenant entitled to statement of account at close of the year.

(a) the holding for which the tenant pays rent to the landlord;

(b) the name of the person (if any) registered in the landlord's serishta as the tenant;

(c) the annual rent payable for the holding;

(d) the amount of rent in arrear at the beginning of the year;

(e) the payments made during the year on account of principal and interest respectively, or, when the payments are made in kind, the quantity and description of produce delivered;

(f) the portion of each payment credited to the rent of the year and the portion credited to the arrears of previous years; and

(g) the amount, if any, remaining unpaid at the close of the year.

(2) The landlord shall prepare and retain a counterpart of the statement containing similar particulars.

102. (1) If a landlord refuses or neglects to deliver to a tenant demanding the same a receipt containing the particulars prescribed by section 100 for any rent paid by the tenant, the tenant may, within six months from the date of the demand, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit. [D. § 65 C. B., s. 57 (d). B. B., ss. 49 (d) and 94.]

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the statement of account for any year prescribed in section 101, the tenant may, within six months from the date of the demand, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during that year.

(3) If a landlord fails to prepare and retain a counterpart of a receipt or statement as required by section 100 or section 101, he shall be punished with fine which may extend to fifty rupees.

*D.—Of the deposit of rent by a tenant in a public office.*

[D. § 99. C. B., ss. 58 & 59. B. B., ss. 50 & 51.]

Application to deposit rent in public office.

103. (*1*) In any of the following cases, namely :—

(*a*) when a tenant bound to pay money on account of rent has reason to believe that the person to whom his rent is payable will not be willing to receive the same and to grant him a receipt therefor:

(*b*) when the money is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers therefor, and no person has been empowered to receive the rent in their behalf: or

(*c*) when the tenant entertains a *bonâ fide* doubt as to whom is entitled to receive the rent:

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made, shall be signed by the tenant or, where he is not personally cognizant of the facts of the case, by some person so cognizant, and shall be accompanied by a fee of eight annas.

[D. §§ 99 & 100 C. B., s. 60. B. B., s. 52.]

Receipt granted by public officer for rent deposited to be a valid acquittance

104. (*1*) If it appears to the officer to whom an application is made under section 103 that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for the same under his official seal.

(*2*) A receipt given under this section shall operate as an acquittance for the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if the rent had been received—

(*a*) in case (*a*) of section 103 by the person specified in the application as the person to whom the rent was payable;

(*b*) in case (*b*) of section 103 by the co-sharers jointly; and

(*c*) in case (*c*) of section 103 by the person entitled to it.

[D. § 100. C. B., s. 61 (*a*). B. B., s. 53 (*a*).]

Notification of receipt of deposit.

105. (*1*) The officer receiving a deposit under section 104 shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars contained in the application under section 103, and, when the deposit is made under section 103, clause (*a*), shall send a copy of the notification by post in a registered cover to the person to whom the rent is alleged by the depositor to be payable.

(*2*) If the amount of the deposit is not paid away under section 106 within the period of fifteen days next following the date on which the notification is affixed as aforesaid, the officer shall cause a notice of the receipt of the deposit to be served (free of charge) upon every person who he has reason to believe claims or is entitled to the deposit.

[D. § 100. C. B., s. 61 (*b*). B. B., s. 53 (*b*).]

Deposit to whom payable.

106. (*1*) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue-officer under this section; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

[C. B., s. 61 (*c*). B. B., s. 53 (*c*).]

Refund to depositor.

107. If no payment is made under section 106 before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given under section 104.

*E.—Of arrears of rent.*

[D. § 101. C. B., s. 56. B. B., s. 48.]

Interest on arrears.

108. Every arrear of rent shall, unless otherwise provided by a written contract between the parties, be liable to interest at the rate of twelve per centum per annum.

[D. § 68. C. B., s. 90. B. B., s. 96.]

Power to award damages on rent withheld without reasonable cause.

109. If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:—

Provided that, when damages are awarded under this section, interest shall not be decreed under section 108.

[D § 69. C B., s. 91. B. B., s. 97.]

Power to award damages to defendant improperly sued for rent.

110. If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum not exceeding twenty-five per centum on the whole amount claimed by the plaintiff as it thinks fit.

Ejectment from non-transferable holding for arrears.

111. (1) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fusli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant. [D. §§ 12 (5) & 93. C. B., ss 79 (5) & 152. B. P., ss 72 (5) & 169.]

(2) A decree passed in favour of the plaintiff in any such suit shall specify the amount of the arrear together with the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

*F.—Of rent taken by division or estimation of the crop.*

Commission for dividing or estimating crops.

112. Whenever rent is taken by division of the produce, or by estimate or appraisement of the crop, if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division, estimate or appraisement, or if there is a dispute about the division of the produce, or the quantity or value of the crop, the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, issue a commission to such person as he thinks fit, to divide, estimate or appraise the crop. [C. B., s 84. B. B., s 88.]

Appointment of assessors, &c.

113. (1) When a Collector appoints a commissioner for any of the purposes mentioned in section 112, the Collector may, in his discretion, direct the commissioner to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assesors (if any), and the procedure to be followed in making the division, estimate or appraisement.

(2) The Commissioner so appointed shall make the division, estimate or appraisement in accordance with those instructions, and submit a report of his proceedings to the Collector.

Remedy for error in division.

114. (1) If in any division under section 113 either party receives less than the share to which he is entitled, he may, within three months from the date on which the division is completed, institute a suit against the other party to recover the value of the additional portion of the crop due to him at the price which prevailed on that date.

(2) If no such suit is instituted within the said period of three months, the division shall for all purposes be deemed as between the parties thereto to have been rightly made.

Procedure where crop has been estimated or appraised.

115. (1) When a crop has been estimated or appraised under section 113, the estimate or appraisement shall be reduced to writing and signed by the commissioner making the same, and shall be submitted to the Collector by whom the commission was issued.

(2) The Collector shall consider the commissioner's estimate or appraisement, and, after such hearing and inquiry (if any) as he may think necessary, shall pass an order thereon either confirming or varying the estimate or appraisement; and that order shall be final.

Costs of proceedings under foregoing sections.

116. All expenses incurred in carrying out the provisions of sections 112 to 115 (both inclusive) shall be payable by the landlord or tenant, or partly by one and partly by the other, as the Collector may in each case direct; and the amount payable by any person under such a direction shall be recoverable from him as if it was an arrear of land-revenue due by him.

Interference with produce of land otherwise than under section 112, criminal trespass.

117. If the landlord of any land of which the rent is payable in the manner mentioned in section 112, or any other person, interferes in any way, without the consent of the tenant, with the cutting or harvesting of any produce of the land except by an application to the Collector under section 112, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. [B. B., s. 9.] XLV of 1860.

*Danabandi* or appraisement papers in Bihár to be deposited in Collector's office.

118. When the rent payable for land in Bihár is the equivalent money-value of a fixed proportion of the actual gross produce thereof, and such equivalent money-value is determined by an estimate or appraisement (*danabandi*) of the standing crop, or by some similar proceeding, the *danabandi* or appraisement papers shall, within fifteen days after the making of the appraisement, be lodged in the office of the Collector of the district. [C. B., s. 85. B. B., s. 89.]

*G.—Further provisions regarding rent.*

Limit to rents of raiyats and under-raiyats.

119. Notwithstanding anything in the foregoing sections of this Act, or in any contract made after the second day of March, 1883, a raiyat or under-raiyat shall not be bound to pay for his holding a money-rent exceeding five-sixteenths of the estimated average annual value of the gross produce of the holding in staple crops, calculated, in such manner as the Board of Revenue may from time to time, by rules, direct, at the prices at which raiyats sell at harvest-time. [C B., s. 23 (c) B. B., s. 30]

Presumption that rent continues unchanged.

120. The rent payable by a tenant in any agricultural year shall be presumed to be the rent payable by him in the following agricultural year until the contrary is shown.

[D § 82]

Power to alter rent in case of new assessment of revenue.

121. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

Revenue officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

[D. § 9. C. B., s 78. B. B., s 70.]

Tenant not liable to transferee of landlord's interests for rent paid to former landlord without notice of the transfer.

122. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

(*2*). When there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

[D. § § 13 & 57. C B., s. 71 B. B. s. 63 (2)]

Abwab, &c.; illegal.

123. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

[D. § 64. B. B., ss. 63 (2), 64 (*a*), 93.]

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

124. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding five hundred rupees; or, when double the amount or value of what is so exacted exceeds five hundred rupees, not exceeding double that amount or value.

[C. B., s 64. B. B., s. 56.]

Rent first charge on tenures, occupancy-holdings and bastu holdings.

125. (1) The rent of a tenure, occupancy-holding or bastu holding shall be a first charge on the same.

(*2*) If the right, title and interest of the tenant is brought to sale in execution of a decree for money obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant.

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## CHAPTER X.

### Other Provisions applicable to several classes of Tenants.

*A.—Of improvement on raiyats' holdings and compensation therefor.*

[C. B., s 29. B. B., s. 69]

"Improvement."

126. (*1*) For the purposes of this chapter the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(*2*) It shall include for those purposes—

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a dwelling-house suitable for the raiyat and his family, together with all necessary out-offices.

But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this chapter if it substantially diminishes the value of any other part of the estate or tenure of his landlord.

(*3*) A work which benefits several holdings shall for the purposes of this chapter be deemed to be, with respect to each of them, an improvement.

[C. B., s. 77. B. B., s. 69]

Right to make improvements in case of occupancy-holding.

127. (*1*) The landlord of an occupancy-raiyat shall not be entitled as such to prevent the raiyat making an improvement in respect of his holding, and shall not, except as next hereinafter provided, be entitled to make an improvement in respect of the holding without the permission of the raiyat.

(2) A landlord of an occupancy-holding who would, but for the want of his raiyat's permission, be entitled to make an improvement in respect of the holding, may, if he desires that any improvement, other than an improvement of the description mentioned in section 126, clause (*f*), be made, deliver or cause to be delivered to the raiyat a request in writing calling upon him to make the improvement within a reasonable time; and, if the raiyat is unable or neglects to comply with that request, may make the improvement himself.

Right to make improvements in case of ordinary raiyat's holding.

128. (1) An ordinary raiyat shall not, except as next hereinafter provided, be entitled to make in respect of his holding without his landlord's permission any improvement other than an improvement of the description mentioned in section 126, clause (*f*). [C. B. s. 77. B. B., s. 69.]

(2) An ordinary raiyat, who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Compensation for improvements payable to raiyat on ejectment.

129. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made. [C. B., ss. 20 (*e*) & 29.]

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat before the commencement of this Act shall be deemed to have been made in accordance with this Act, unless it is shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself.

Power to make rules for appointment of assessors.

130. The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 129, for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

131. (1) In estimating the compensation to be awarded under section 129 for an improvement, regard shall be had—

(*a*) to the amount by which the letting-value, or the produce of the holding, or the value of that produce is increased by the improvement;

(*b*) to the labour and capital required for the making of such an improvement; and

(*c*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement.

(2) When the amount of the compensation has been assessed, the landlord and raiyat may, if they think fit, agree that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Certain stipulations in contracts to be void.

132. A stipulation in a contract providing—

(*a*) that a landlord shall be entitled to prevent a raiyat from making, or to eject him for making, such improvements on his holding as he is entitled to make under this Act, or

(*b*) that a raiyat ejected from his holding shall not be entitled to compensation for improvements in any case in which he would, under this Act, be entitled to such compensation,

shall be void.

### *B.—Of the landlord's right to measure land.*

Landlord entitled to measure land unless restrained by contract.

133. Subject to the provisions of any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter upon and measure all land comprised in any estate or tenure, of the rents of which he is in receipt, except land entered in the general register of revenue-free lands prepared under the Land Registration Act, 1876: [D. § 58. C. B., s 75. B. B., s. 67] VII (B. C.) of 1876.

Provided that, when any land has been measured by a landlord, whether before or after the passing of this Act, it shall not, without the written permission of the Collector, be again measured by the landlord within the ten years next following the date on which it was so measured.

*Illustration.*

A., a proprietor, grants a portion of his estate in patní to B, to whom the raiyats pay rent. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patní lease.

Tenant bound to point out boundaries.

134. When a landlord desires to measure, under section 133, any land held by his tenant, the tenant shall, if the landlord requires him to do so, attend and point out the boundaries of the land. [D. § 94 B. B., s. 176.]

[D. § 94. B. B., s. 176.]

Remedy when landlord is obstructed or tenant does not point out boundaries.

135. (1) When a landlord desires to measure any land under section 133, and any person occupying the land obstructs him in so doing, or any tenant, bound under section 134 to attend and point out the boundaries of his land, refuses or neglects so to do, the landlord may apply to the Court which would have jurisdiction to hear a suit for the recovery of the land, to make an order directing such person to permit the measurement, or such tenant to attend and point out the boundaries, as the case may be.

(2) The Court may, on receiving an application under this section, cause a notice to be served on the occupant or tenant, as the case may be, requiring him to show cause, at a time and place specified therein, why the order applied for should not be made.

(3) If the person on whom a notice is served under sub-section (2) does not show cause as aforesaid, the Court may make the order applied for.

[D s. 94. B. B., s. 177.]

Presumption against tenant not attending to point out boundaries.

136. If a tenant ordered under section 135 to attend and point out the boundaries of the land held by him refuses or neglects to do so, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord, at the time the tenant was ordered to attend, shall be presumed to be correct until the contrary is shown.

[D. § 94. C. B., s. 76 (a). B. B., s. 68 (a).]

Measurement in suits between landlord and tenant to be made according to Government measure.

137. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bighá.

(2) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

[D. § 98. C. B., s. 76 (b). B B., s. 68 (b)]

Determination of the length of the standard in case of dispute.

138. (1) If any dispute as to the length of a standard used in a local measure arises in any suit under this Act, the Collector shall, on a reference made to him for this purpose by the Court, determine the proper length thereof.

(2) An appeal shall lie from the Collector's decision to the District Judge.

(3) If no such appeal be preferred, the decision of the Collector, or, if an appeal be preferred, the decision of the District Judge thereon, shall be conclusive.

### *C.—Of surrender and abandonment.*

[D. § 12 (3). C B, s. 79 (3). B B, s. 72 (3).]

Surrender by raiyat.

139. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding; but notwithstanding the surrender he shall continue to be liable for the rent of the holding for the agricultural year next following the date of the surrender, unless—

(a) he gives to his landlord, at least three months before he surrenders, notice in writing of his intention to surrender; or

(b) the holding is let to another person for an agricultural year following the surrender.

(2) If the landlord refuses to receive a notice, tendered to him under clause (a), or to sign a receipt for the same, the raiyat may apply to the Court within the jurisdiction of which the holding or any portion of it is situate, and the Court shall thereupon cause the notice to be served on the landlord.

[D s 12 (4). C. B., s. 72 (4). B B., s. 72 (4)]

Non-transferable holding in certain cases to be deemed surrendered.

140. Any tenant of a holding which is not transferable, who leaves his holding uncultivated and the rent of it unpaid for a period of one year, shall, at the expiration of that period, be deemed to have surrendered the holding:

Provided that, in reckoning that period, any time during which, owing to an inundation or any other accident to the land beyond the tenant's control, it may have been impossible to cultivate the land, shall be excluded.

### *D.—Of Merger.*

[C. B., ss 43 & 44. B B, ss. 34 & 35.]

Merger of tenant's interest in landlord's interest.

141. (1) When in the case of any tenancy the interest of the landlord and that of the tenant become, by transfer, succession or otherwise, united in the same person, so as to be owned by him in the same right, the interest of the tenant shall—

(a) during the period of three months mentioned in sub-section (2) be presumed to be merged in the interest of the landlord and extinguished, unless the person proves that he has not intended it to be merged, and

(b) after the expiration of that period be deemed to be so merged and extinguished, unless within that period the person executes an instrument declaring his intention that a merger shall not take place, and the instrument is registered under the Indian Registration Act, 1877, and is published in the prescribed manner.

III of 1877.

(2) The period of three months referred to in sub-section (1) shall, when the interests become united after the commencement of this Act, begin to run from the date on which they become united, and, when they have become united before the commencement of this Act, begin to run from the commencement of this Act:

Provided that, when, at the time the interests become united, the person in whom they become united has not attained his age of majority or is of unsound mind, the period shall not begin to run before he has attained that age or become of sound mind, as the case may be.

(3) A merger under this section shall not operate to the prejudice of any person having a lien upon the interest merged.

(4) When, at the time of a merger taking place in respect of a tenancy under this section, a sub-tenancy exists immediately under that tenancy, the person who becomes the owner of the consolidated interests shall, subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue and to the provisions of this Act as to sales for arrears of rent, have the same rights against, and be subject to the same obligations towards, the sub-tenants, as the owner of the tenant's interest had, and was subject to, before the merger.

*E.—Of the appointment of a manager on behalf of co-owners of an estate or tenure.*

Power to call upon co-owners to show cause why they should not appoint a common manager.

142. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue, [D. § 16. C. B., s. 65 (1). B. B., s. 57 (1).]

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, upon the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served upon all the co-owners, calling upon them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under Act VII of 1876 passed by the Lieutenant-Governor of Bengal in Council.

Power to order them to appoint a manager if cause is not shown.

143. If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 142, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served upon any co-owner who did not appear before it was made. [C. B. s. 65, (2.) B. B., s. 57 (2).]

Power to appoint manager if order is not obeyed.

144. If the co-owners do not, within one month after the making of an order under section 143, or, where the order has been served as directed by that section, within one month after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may— [C. B., s. 66 (1). B. B., s. 58 (1.)]

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards assents to undertake the management thereof; or

(b) in any case appoint a manager.

Power to nominate person to act in all cases under section 144 (b).

145. The Lieutenant-Governor of Bengal may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under section 144, clause (b); and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager. [C. B., s. 66 (2). B. B., s. 58 (2)]

The Court of Wards Act, 1879, applicable to management by Court of Wards under section 144 (a).

146. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 144, so much of the provisions of the Court of Wards Act, 1879,* as relates to the management of immoveable property shall apply to the management. [C. B., s. 66 (3). B.B., s.58(3).] *IX (B. C.) of 1879.

Provisions applicable to manager appointed under section 144 (b).

147. (1) A manager appointed under section 144, clause (b), shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs. C. B., s. 67. B. B., s. 59.]

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised

(4) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts; and

(5) He shall be removeable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

148. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 144, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights. [C. B., s. 68 B. B., s. 60.]

*F.—Miscellaneous.*

No ejectment except in execution of decree.

149. No tenant shall be ejected from his holding except in execution of a decree. [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5),(6)and(7.)]

Portion of holding not transferable.

150. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee as a separate holding. [B B., ss. 21 (b), 37.]

## CHAPTER XI.

### Of the Settlement of Rents by a Revenue-officer.

Power to order Revenue-officers to settle rents.

151. (*1*) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf.

(*2*) The cases in which an order may be made under this section are the following, namely:—

(*a*) where a large proportion of the tenants or of the landlords applies for such an order, and deposits for the payment of expenses such amount as the Local Government directs;

(*b*) where the making of such an order is calculated to settle or avert a serious dispute existing, or likely to arise, between the tenants and their landlords generally;

(*c*) where a settlement of revenue is being made in respect of the local area, or the local area is comprised in an estate or tenure owned or managed by the Government or the Court of Wards.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

Bar to jurisdiction of Civil Courts while order is in force.

152. While an order under section 151 continues in force in respect of any tenants, a Civil Court shall not except as provided by section 155, clause (*b*), entertain a suit for the enhancement or reduction of the rents of those tenants under this Act.

Rents of certain tenants to be fixed.

153. (*1*) When the rents of any tenants to whom an order under section 151 applies are subject to alteration by order of a Court, the officer appointed to settle the rents of those tenants under this chapter shall, without any application being made to him in this behalf, fix those rents in accordance with the principles embodied in this Act, and so that no rent fixed under this section shall exeeed the maximum prescribed by this Act in cases of enhancement.

(*2*) Where the Local Government has, under this chapter, directed a settlement of the rents of the occupancy-raiyats of any local area, and a Table of Rates and produce has not been prepared under Chapter VI for that local area, it may further direct the officer appointed to settle the rents to prepare such a table before proceeding to fix the rents of those raiyats.

Rents of other tenants to be ascertained and recorded

154. When the rents of any tenants to whom an order under section 151 applies are not subject to alteration as aforesaid, the officer appointed to settle the rents of those tenants shall, without any application being made to him in this behalf, ascertain and record the rents payable by them.

Power to refer question to Civil Court or leave case to be dealt with by Civil Court.

155. (*1*) If in the course of the proceedings taken for fixing the rent of a tenant under section 153 any question arises which, in the opinion of the officer conducting those proceedings, would be more properly decided by the Civil Court, the officer may in his discretion, but subject to any rules made by the Local Government in this behalf,

(*a*) refer the question for decision to the Civil Court which would, but for section 152, have had jurisdiction to try a suit for the enhancement or reduction of the rent, or

(*b*) by order in writing direct that the tenant's case be excluded from the operation of this chapter and be left to be disposed of by suit in a Civil Court, as if the order under section 151 did not apply to it.

(*2*) When a Revenue-officer makes a reference under clause (*a*) of this section in respect of a tenant, he may either stay his proceedings in respect of that tenant, or, if the nature of the case admits of his doing so, pass an order in alternative form or otherwise fixing the rent contingent upon the decision of the Civil Court.

Preparation of jamabandí.

156. (*1*) A Revenue-officer settling rents under this chapter shall prepare, in the prescribed form, one or more jamabandís, comprising all or such numbers of the tenants whose rents he is apppointed to settle as the Board of Revenue may direct.

(*2*) Every jamabandí prepared under this section shall show in respect of each tenant comprised therein—

(*a*) the class to which he belongs, that is to say, whether he is a tenure-holder, occupancy-raiyat, tenant of a bastu holding, ordinary raiyat or under-raiyat;

(*b*) the land held by him;

(*c*) the name of his landlord;

(*d*) whether the rent has been fixed under section 153 or ascertained under section 154;

(*e*) the amount of the rent fixed or ascertained, and, when the rent is a gradually increasing one, the time at which, and the steps by which, it increases.

157. Every jamabandí prepared under section 156 shall be published in the prescribed manner, and any person objecting to any entry therein may, within one month from the date of the publication, present to the Revenue-officer, for transmission to the Commissioner of the Division, a petition stating his objection to the entry.

Publication of jamabandí and objections thereto.

158. (*1*) On the expiration of the said period of one month, the Revenue-officer shall submit to the Commissioner of the Division a copy of the jamabandí, with a report setting forth the grounds on which it has been prepared, and the petitions of objection (if any) which he may have received under section 157.

Submission of jamabandí and petitions of objection to the Commissioner and Board.

(*2*) The Commissioner shall consider the jamabandí and report, and the objections (if any) and, after allowing the objectors (if any) an opportunity of being heard, shall forward the papers to the Board of Revenue with his opinion regarding the same.

Sanction to and final publication of jamabandí, and date from which it comes into force.

159. (*1*) The Board of Revenue may return the papers for further inquiry, or may submit the jamabandí with or without modifications to the Local Government for sanction.

(*2*) The Local Government may return for further inquiry the papers received under sub-section (*1*) or may sanction the jamabandí with or without modification.

(*3*) When a jamabandí has been sanctioned by the Local Government under this section, it shall be published in the prescribed manner.

(*4*) A jamabandí published under this section shall come into force from the commencement of the agricultural year next following the publication.

Rent fixed under foregoing provisions to be deemed the rent payable.

160. When a jamabandí has come into force under section 159, a tenant's rent shown therein as fixed under section 153 shall be deemed to be the rent payable by him, and shall not, during the period of ten years next following the date on which the jamabandí comes into force, be enhanced in a suit instituted under this Act, except on the ground that since the jamabandí came into force an improvement has been made by the landlord which, but for this section, would entitle him to an enhancement:

Provided that—

(*1*) such rent may from time to time be altered in any other manner permitted by law; and

(*2*) nothing in this section shall prevent the rent shown in a jamabandí in respect of a tenancy from being called in question on any of the following grounds, namely:—

(*a*) that the tenancy does not exist or that the tenant is not liable to pay rent;

(*b*) that the tenant belongs to a class different from that to which he is shown in the jamabandí to belong;

(*c*) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandí;

(*d*) that a rent different from that shown in the jamabandí has been fixed by a contract legally binding on the parties, and which has been brought to the notice of the officer preparing the jamabandí.

Rent ascertained under foregoing provisions to be presumed to be the rent payable.

161. When a jamabandí has been published under section 159 a tenant's rent shown therein as ascertained under section 154, shall be presumed to be the rent payable by that tenant until the contrary is shown.

Certain other entries in jamabandí to be presumed to be correct.

162. An entry made in a jamabandí under clause (*a*), clause (*b*) or clause (*c*) of section 156 shall, after the jamabandí has been published under section 159, be presumed for all purposes to be correct until the contrary is shown.

Expenses incurred in proceedings under this chapter how defrayed.

163. All expenses incurred by the Government in carrying out the provisions of this chapter in any local area, in any case mentioned in section 151, clause (*a*) or clause (*b*), including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may from time to time fix of the salaries of officers employed in carrying out those provisions therein in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are fixed or ascertained under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him.

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## CHAPTER XII.

### Of the preparation of a Record-of-rights by Revenue-officer.

Power to order preparation of record-of-rights.

164. (*1*) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies or any class of tenancies in a local area by Revenue-officers to be from time to time appointed by the Local Government.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(a) where a large proportion of the landlords or of the tenants applies for such an order and deposits for the payment of expenses such amount as the Local Government direct;

(b) Where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

(c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

(3) The Local Government shall, in any order made by it under this section, specify the particulars to be included in the record-of-rights to be prepared under that order.

(4) The particulars so specified may be all or some of the following, namely:—

(a) the name of each tenant;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, occupancy-raiyat, tenant of a bastu holding, ordinary raiyat or under-raiyat;

(c) the land held by him;

(d) the name of his landlord;

(e) the rent payable;

(f) the mode in which that rent has been fixed, whether by contract, by order of a Court or otherwise.

(5) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Presumption as to entries in record.

165. Every entry in a record-of-rights prepared under section 164 shall be presumed to be correct until the contrary is proved.

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## CHAPTER XIII.

### Of the Recovery of Rents from Raiyats and Under-raiyats by distraining the Produce of the Holding.

[B B ss. 101, 104, 123.]

Cases in which an application for distraint may be made.

166. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Court, having jurisdiction to entertain a suit for the recovery of the arrear, requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,

(a) any crops or other products of the earth standing or ungathered on the holding;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, on a threshing-floor, or place for treading out grain or the like (whether in the fields or within a homestead) or in a storehouse.

Provided that an application shall not be made under this section—

VII (B C.) of 1876.

(1) by a proprietor or manager as defined under the Bengal Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B B., ss. 71, 125.]

(3) in respect of the produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

[B B., ss. 104-5.]

Form of application and fee payable.

167. (1) Every application under section 166 shall specify—

(a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(b) the name of the tenant;

(c) the period in respect of which the arrear is claimed;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding as the case may be, under which that amount is payable;

(e) the nature and approximate value of the produce to be distrained; and

(f) the place where it is to be found, or such other particulars as may suffice for its identification.

(2) Every such application shall be liable to the court-fee which would be payable in a suit instituted for the recovery of the arrear therein claimed.

(3) Every such application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so

verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Procedure on receipt of application.

168. (*1*) The applicant shall, at the time of filing an application under section 166, or as soon after as the Court permits, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application. [B. B., ss. 105 & 106.]

(*2*) The Court may examine the applicant, and may admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

Procedure if application is admitted.

169. If the application is admitted, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court: [B. B., s. 107.]

Provided that produce, which from its nature does not admit of being stored, shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering. [D. s. 111.]

Service of demand and account.

170. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, together with an account exhibiting the grounds on which the distraint is made. [B. B., s. 108.]

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

Right to reap &c., produce

171. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation. [B. B., ss. 109 & 110.]

(*2*) In default of the person entitled to do so, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and shall store the same in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood.

(*3*) In either case the distrained property shall be placed in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

172. (*1*) Unless the demand, with all costs of the application for distraint, be immediately satisfied, an officer distraining property under section 169 shall issue a proclamation specifying the particulars of the property distrained and demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction. [B. B., s. 113.]

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

Place of sale.

173. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage. [B. B., s. 114.]

Power to sell produce before it is reaped or gathered.

174. Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter upon the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them. [D s. 111.]

Manner of sale.

175. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder. [B. B, s. 115.]

Postponement of sale.

176. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day or (if a market be held at the place of sale) the next market-day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property. [B B., s. 116.]

Payment of purchase-money.

177. The price of every lot shall be paid in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary, and in default of such payment the property shall be put up again and sold. [B. B., s. 117.]

[B. B., s. 118.]

Certificate to be given to purchaser.

178. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

[B. B. s. 119.]

Proceeds of sale how to be applied.

179. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay to the applicant for distraint the expenses incurred by him on account of the distraint, calculated on a scale of charges prescribed by rules to be made by the Board of Revenue in this behalf.

(*2*) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale, and the surplus (if any) shall be paid to the person whose property has been sold.

[B. B., s. 120.]

Certain officers may not purchase.

180. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

[B. B., ss. 111, 112 & 123.]

Procedure where demand is paid before the sale

181. (*1*) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 170, together with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(*2*) When the distraining officer receives the deposit, he shall forthwith pay the same into the Court.

(*3*) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(*4*) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay over the same to the applicant for distraint, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

[B. B., s. 124.]

Amount paid by under-tenant for his lessor may be deducted from rent.

182. (*1*) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a seperior tenant, makes any payment under section 181, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and, if that landlord is not the defaulter, he shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

(*2*) Nothing in this section shall affect the right of an inferior tenant making a payment under section 181 to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B.B., s. 126.]

Conflict between rights of superior and inferior landlords.

183. When land is sublet, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distraint of property which is under attachment.

184. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail, but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 179 without the sanction of the Court by which the order of attachment or sale was issued.

[B. B. ss. 91, 122.]

Penalty for illegal distraint.

185. Any person who, otherwise than in accordance with this Act or some other enactment for the time being in force, distrains or attempts to distrain the produce of a tenant's holding, or prevents or attempts to prevent any person from reaping, gathering, storing, removing or otherwise dealing with any produce of the holding, shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

Persons benefitting, &c., by offences under section 185 liable to punishment.

186. When any offence punishable under section 185 is committed for the benefit of, or in behalf of, any person owning or claiming any interest in the land in respect of which the offence is committed, or having or claiming any interest in a dispute which had led to the commission of the offence, or when any person has accepted or derived any benefit from the commission of any such offence, he shall be punished with imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both, if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

[B. B., s. 127.]

Power to suspend provisions of sections 166 to 184.

187. (*1*) The Local Government may, by an order published in the official Gazette, suspend the provisions of sections 166 to 184 (both inclusive) in any local area for such time as it thinks proper.

(*2*) So long as an order under this section continues in force, in respect of any local area, no Court shall receive an application for distraint for arrears of rent due on lands situate within that local area.

## CHAPTER XIV.

### Special Rules of Procedure applicable to Suits between Landlord and Tenant.

*A.—Rules applicable to suits between landlord and tenant generally.*

Place of suing.

188. The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties. [D. § 174. C. B., s. 148. B. B., s. 165.]. XIV of 1882.

Naíbs or gumáshtas to be authorized agents.

189. Every naíb or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending. [D. § 169. C. B., s. 150 B. B. s. 167(a).]

Special register of suits.

190. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf. [D. § 173. C. B., s. 147. B. B., s. 164.] XIV of 1882

*B.—Rules applicable to particular classes of suits between landlord and tenant.*

Sections 121 to 127, 129, 194 to 197, 305, and 320 to 325C of Code not to apply in suits for possession, rent or damages.

191. Sections 121 to 127 (both inclusive), 129, 194 to 197 (both inclusive), 305, and 320 to 325C (both inclusive) of the Code of Civil Procedure shall not apply in any suits of the following classes between landlord and tenant as such, namely:— [C. B., s. 165 B. B., s. 187.] XIV of 1882.

(a) suits for the recovery of rent :
(b) suits for penalties claimable under any provision of this Act :
(c) suits to recover possession of the land.

Particulars to be specified in plaint in such suits.

192. The plaint in every suit of a description mentioned in section 191 shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the extent, situation, designation and boundaries of the land held by the tenant ; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification. [D. §§ 149 & 185. C B., s. 167. B. B., s. 189.] XIV of 1882.

Summons in such suits to be for final disposal.

193. The summons shall in every such suit be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only. [D. § 192. C. B., s. 173. B. B., s. 195 ]

Service of summons in such suits by registered letter.

194. The service of a summons on a defendant in any such suit may, if the Court so directs, be effected by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866.

Written statements not to be filed in such suits without leave.

195. A written statement shall not be filed in any such suit without the leave of the Court. [D. § 108. C. B., s. 184 B. B., s. 206.] XIV of 1866.

Mode of recording evidence in such suits.

196. The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply in all such suits whether an appeal is allowed in them or not. [B. B., s. 214.] XIV of 1882.

Execution in such suits on oral application.

197. When a decree, not being a decree of the description referred to in section 111, sub-section (2), is passed in any such suit, the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof. [D. §§ 177 & 223. C. B., ss. 155 & 197. B. B., ss. 171 & 219.]

No appeal in certain suits for arrears and penalties.

198. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal in any suit instituted by a landlord for arrears or by a tenant for a penalty claimable under any provision of this Act where— [D. § 179. C. B., ss. 157 & 220. B. B., ss. 173 & 242.]

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, and, if he is satis-

fied that a failure of justice has been caused by a substantial error, defect or irregularity in the proceedings or in the decision, may pass such order as he thinks fit.

Defendant in suit for arrear admitting arrear is due, but disputing plaintiff's title, to pay into Court.

199. (*1*) When, in a suit for an arrear of rent instituted against a tenant, the defendant admits that the arrear is due by him, but pleads that it is due to a person other than the plaintiff, the Court may, if it thinks fit, refuse to take cognizance of the plea until the defendant has paid the amount of the arrear into Court.

(*2*) When the amount of an arrear has been paid into Court under this section, the Court shall give the defendant a receipt for the same, and the receipt so given shall operate as an acquittance for the arrear, in the same manner and to the same extent as if it had been paid to the person entitled to it.

(*3*) The Court shall forward the amount paid in to the officer to whom an application to deposit the rent would be made under section 103 and it shall thereupon be deemed to be a deposit received under clause (*c*) of that section.

[C. B., s. 198. B. B., s. 220.]

When assignee of decree for arrears may apply for execution.

200. Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become, and is vested in him.

[C. B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*).]

Date from which decree for enhancement takes effect.

201. (*1*) A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall not take effect before the commencement of the agricultural year next following, and, if passed in a suit instituted in the last four months of the agricultural year, shall not take effect before the commencement of the agricultural year next but one following.

(*2*) Subject to the provisions of sub-section (*1*), it shall be in the discretion of the Court to fix the date from which any such decree shall take effect.

[B. B., ss. 21. (*c*), 31, 44 & 45 Vic., C. 41, s. 14.]

Relief against forfeitures.

202. (*1*) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, whether the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may from time to time extend a period fixed by it under sub-section (*2*) for remedying a damage or breach.

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

[C. B., s. 80. B.B., s. 73 ]

Rights of ejected raiyats in respect of crops and land prepared for sowing.

203. The following rules shall be applicable in the case of every raiyat ejected from a holding—

(*a*) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capita expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value:

Provided that a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section when, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

[C B., s. 80. B.B, s. 73.]

Payment by raiyat for occupation of land under section 203.

204. When a landlord elects, under section 203, clause (*a*), to allow a raiyat to retain possession of any land for the purpose specified in that clause, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

All claims between landlord and tenant to be determined in ejectment-proceedings.

205. In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Procedure when, on ejectment, money is due by the landlord to the tenant.

206. (*1*) When it appears to a Court making an inquiry under section 205 that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall unless the

landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(2) If it is so paid within the time specified, the Court shall eject the tenant; and if it is not so paid, the Court shall refuse to eject the tenant.

*C.—Suit to determine status, &c., of tenant.*

Suit to determine status, &c., of tenant.

207. Every landlord may institute a suit against his tenant, and every tenant against his landlord, for the determination of all or any of the following matters, namely:— [C.B., s. 151. B.B., s. 168.]

(a) the land held by the tenant;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, occupancy-raiyat, tenant of a bastu holding, ordinary raiyat, or under-raiyat, and if he is a tenure-holder, whether his rent is liable to enhancement; and

(c) the rent payable by him at the time the suit is instituted.

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## CHAPTER XV.

### Of the Sale of Transferable holdings in Execution of Decrees for arrears due on them.

Definitions.

208. (1) "Incumbrance" in this chapter, used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created upon the holding by the tenant in limitation of his own interest therein, except— [D. §§ 12, (11) and 155. C.B., ss. 206, Expl., & 210. B.B., ss. 228. Expl., & 232.]

(a) a tenure existing from the time of the Permanent Settlement;

(b) a tenure recognised by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) a tenure of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(d) a right of occupancy;

(e) a right conferred on an occupancy raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(f) any right or interest which the landlord has expressly and in writing given the tenant permission to create.

(2) "Registered incumbrance" in this chapter, used with reference to a tenancy on which an arrear of rent is due, means any incumbrance which the defaulter or his predecessor in interest has created by an instrument registered under the Registration Act for the time being in force, and of which, after it has been registered, a copy has been served on the landlord under section 223, not less than six months before the arrear became due. [C.B., s. 206, Expl. B.B., s. 228, Expl.]

Application for sale of holding.

209. (1) When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, his application shall contain, in addition to the particulars specified in that section and section 237 of the said Code, a statement of the annual rent of the holding. [C.B., s. 201, B.B., s. 223.] XIV of 1882.

(2) When the holding is a permanent tenure, there shall be filed with the application a copy of so much of the register kept under Chapter III as relates to the tenure.

Proclamation announcing sale.

210. (1) When an order has been passed for the sale of a holding upon an application made under section 209, the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating that specifying the particulars mentioned in that section, announce— [D. § 152. C.B., s. 203. B.B., s. 225.] XIV of 1882.

(a) in the case of a tenure, that the tenure will first be put up to auction subject to the registered incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day of which due notice will be given with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, or bastu holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

Sale of tenure subject to registered incumbrances and effect thereof.

211. (1) When a tenure has been advertised for sale under section 210, it shall be put up to auction, subject to registered incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances. [C.B., s. 206. B.B., s. 228 (a) and Expl.]

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance upon the tenure not being a registered incumbrance.

[C. B., s. 207 (a) B. B., s. 329 (a).]

Sale of tenure with power to avoid all incumbrances and effect thereof.

212. (1) If the bidding for the tenure put up to auction under section 211 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

XIV of 1882.

[D. § 155. C. B., s. 210. B.B., s. 232.]

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance on the tenure.

[B.B., s. 228. (b).]

Sale of occupancy-holding with power to avoid all incumbrances and effect thereof.

213. (1) When an occupancy-holding or bastu holding has been advertised for sale under section 210, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.

214. (1) A purchaser having power to annul an incumbrance under section 211, section 212, or section 213, and desiring to avoid the same, may within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B.B., s. 225 (c).]

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

215. (1) The Local Government may, from time to time, by notification in the official Gazette direct that occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings in that local area shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D. § 246. C. B., s. 211. B. B., 233.]

XIV of 1882.

Rules for disposal of the sale-proceeds.

216. (1) In disposing of the proceeds of a sale under this chapter, the following rules instead of those prescribe by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(c) If there remains a balance after these sums have been paid there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon this application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

[D. § 153. C. B., s. 204. B. B., s. 226.]

XIV of 1882.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on concessions of satisfaction by decree-holder.

217. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the cost decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this chapter.

[D. §§ 35, 36. 154. C. B., s. 205. B. B., s 227.]

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

218. (1) When any person having, in a holding advertized for sale under this chapter, an interest which would be voidable upon such sale, pays into Court the amount requisite to prevent the sale,

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(b) his mortgage shall, subject to the provisions of section 125, be deemed to be the first charge on the holding; and

(c) he shall be entitled to take possession of the holding as mortgagee, and retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

219. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, if that landlord is not the defaulter, he may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached. [D. §§ 35, 36 154. C. B., s. 205. B. B., s. 227.]

Decree-holder may bid at sale; judgment-debtor may not.

220. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may without the permission of the Court bid for or purchase the holding. [C. B., s. 208 (1). B. B., s. 230 (1)] XIV of 1882.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

Operation of sections 313 and 326 of Code of Civil Procedure excluded.

221. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this chapter. XIV of 1882.

Registration of certain instruments creating incumbrances.

222. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act. III of 1877

Registration officers to serve copies of instruments creating incumbrances.

223. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created and on payment by him of such fee as the Local Government may fix in this behalf, cause a copy of the instrument to be served on the landlord in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons. [C. B. s. 206, Expl. B. B., s. 228, Expl.] III of 1877.

## CHAPTER XVI.

### Of Limitation.

Limitation in suits, appeals and applications in Schedule IV.

224. The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, and application made after the period of limitation so prescribed, shall be dismissed although limitation has not been pleaded. [D. §§ 77, 78 & 79. C. B., s. 92. B. B., s. 98.]

Portions of the Indian Limitation Act not applicable to such suits, &c.

225. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 224. [C. B., s. 93 B. B., s. 99] XV of 1877.

## CHAPTER XVII.

### Supplimentary.

Saving as to service-tenures.

226. Nothing in this Act shall confer a right to transferor bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Power to make rules regarding procedure and powers of officers.

227. The Local Government may, from time to time, by notification in the official Gazette make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(a) Power to enter upon any land, and to survey, demarcate and make a map of the same; and

(c) Power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

Procedure for making, publication and confirmation of rules.

228. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of he proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

Náibs and Gumáshtas of landlords.

229. Any appearance, application or act in, before, or to, any Court or other authority required or authorized by this Act to be made or done by a landlord may unless the Court or authority otherwise directs, made or done also by a náib or gumáshta of the landlord empowered in this behalf by a written authority under the hand of the landlord; and every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, a náib or gumáshta of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

[D. § 82.] C. B., s. 3. B. B., s. 3.] "Rent" and "land."

Rights of pasturage, forest-rights, &c.

230. The provisions of this Act applicable to suits for the recovery of arrears of rent shall as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

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## SCHEDULE I.

*(See Section 2.)*

### Repeal of Enactments.

*Regulations of the Bengal Code.*

| Number and year. | Subject of Regulation. | Extent of repeal. |
|---|---|---|
| VIII of 1793 . . | A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprietors of land in Bengal, Bihár, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates. | Sections 51, 52, 53, 54 55, 64, and 65. |
| XII of 1805 . . | A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Mednípur. | Section 7. |
| V of 1812 . . | A Regulation for amending some of the rules at present in force for the collection of the Land-revenue. | Sections 2, 3, 4, 26 and 27. |
| XVIII of 1812 . | A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof. | Preamble and Sections 2 and 3. |
| VIII of 1819 . . | A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal. | The whole Regulation. |
| I of 1820 . . . | A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described. | The whole Regulation. |
| XI of 1825 . . | A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea. | In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the Clause. |

## SCHEDULE I—*contd.*

*Acts of the Bengal Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| VI of 1862 . . | An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal). | The whole Act. |
| VIII of 1865 . . | An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof. | The whole Act. |
| IV of 1867 . . | An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments. | The whole Act. |
| VIII of 1869 . . | An Act to amend the Procedure in suits between Landlords and Tenants. | The whole Act. |
| VIII of 1879 . . | An Act to define and limit the powers of Settlement officers. | The whole Act. |

*Acts of the Governor-General in Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| XXV of 1850 . . | An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846. | So much as is unrepealed. |
| XXXIII of 1850 . | An Act for amending the forms necessary for the sale of patní tenures in Bengal. | The whole Act. |
| VI of 1853 . . . | An Act relating to summary suits for arrears of rent, to sales of patní taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent. | The whole Act. |
| X of 1859 . . | An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal. | The whole Act. |

## SCHEDULE II.

*(See Section 36,)*

*Extract from Preamble to Regulation VIII of 1819.*

"In the exercise of the privilege * * * conceded to zamíndárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Burdwan, but has since been extended to other zamíndárís; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatni taluqdárs; these, again, sometimes similarly underlet to be patnídárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

## SCHEDULE III.

### Summary Sale of Patní tenures.

*(See sections 42.)*

*Extract from Regulation VIII of 1819, amended in accordance with subsequent enactments.*

Zamíndárs allowed sales of tenures, in which right to sell for arrears is reserved.

8. *First.*—Zamíndárs, that is, proprietors under direct engagements with the Government shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

First sale to be applied for on first Baisákh.

*Second.*—On the first day of Baisákh, that is, at the commencement of the following year from that of which rent is due, the zamíndár shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdárs or other holders of an interest of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the kachahrí, with a notice that if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth fall on Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sadr kachahrí of the zamíndár himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahrí or at the principal town or village upon the land of the defaulter.

The zamíndár shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahrí of the nearest munsif, or if there should be no munsif, to the nearest tháná, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Mid year sale to be applied for on first of Kártik.

*Third.*—On the first day of Kártik, in the middle of the year, the zamíndár shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the zamíndár, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

Sales how conducted.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public kachahrí; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

If the fifteen per cent. be not paid in cash, * * * * * * * * * within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the zila, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

10. At the time of the sale, the notice previously stuck up in the kachahrí shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

Forms to be observed in selling.

A person shall attend on the part of the zamíndár, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mufassal, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate rubakárí to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zamíndár shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

11. *First.*—It is hereby declared, that any taluq or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluq may have been held.

Tenure to be sold free of incumbrance by act of defaulter.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zamíndár to hold the tenure of his creation answerable, in the state in which he created it, for the rent which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zamíndár.

*Second.*—In like manner, on sale of a taluq for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the raiyats; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

No under-lease to stand after sale.

* * * * * * * * *

13. *First.*—With reference to the injury that may be brought upon the holder of a taluq of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zamíndár, after having realised his own dues from the inferior tenantry, it is deemed necessary to allow such taluqdárs the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

Reason for allowing under-tenants means of staying sale.

*Second.*—Whenever the tenure of a taluqdár of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the zamíndár, the taluqdárs of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into the Collectorate the amount of balance that may be declared due by the person attending on the part of the zamíndár on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the zamíndár the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

How under-tenants may stay sale.

*Third.*—If the amount so lodged shall be rent due by the inferior taluqdár to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Procedure in case of amount lodged being rent due from under-tenant;

*Fourth.*—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluq so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage, and he or they shall be entitled, on applying for the same, to obtain

and in case of amount lodged being advanced from private funds.

immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realised from the usufruct of the tenure.

Sale not to be stayed unless arrear claim be lodged.

14 *First.*—Should the balance claimed by a zamíndár on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

But suit to lie for its reversal.

It shall, however, be competent to any party desirous of contesting the right of the zamíndár to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zamíndár for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamíndár or person at whose suit the sale may have been made.

Defaulter may apply for summary investigation.

*Second.*—In cases also in which a taluqdár may contest the zamíndár's demand of any arrear, as specified in the notice advertised, such taluqdár shall be competent to apply for a summary investigation at any time within the period of notice; the zamíndar shall then be called upon to furnish his kabúliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Sale not to be stayed unless amount claimed be deposited.

Such award, if so made will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zamíndár or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, * * * * * * * * * or in Government securities, by the taluqdár contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.

Delivery of possession to purchaser.

15. *First.*—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kachahrí of the zamíndár, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual 'amaldastak' or order for possession, together with the notice to the raiyats and others to attend and pay their rents henceforward to him.

The zamíndár shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahrí; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished, or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector; and he shall receive the orders for possession, and shall be put in possession of the lands by means of the názir, in the same manner as possession is obtained under a decree of Court; * * * * * * * * *

Procedure in case of opposition to purchaser.

*Second.*—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal and signature of the Collector declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamíndár, acquired the entire rights and privileges attaching to the tenure of the late taluqdár, in the state in which it was originally derived by him from the zamíndár, he alone will be recognized as entitled to make the zamíndárí collections in the mufassal, and no payments made to any other individual will on any account be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Procedure in case of continued opposition.

*Third.*—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the Police-

officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

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Disposal of proceeds of sales.

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Deduction on account of Government.

*Second.*—One per cent. shall first be deducted from the net proceeds realised, and shall be carried to the account of Government, for the purpose of meeting the expence of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Payment to zamíndárs.

*Third.*—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluq to sale) to the zamíndár or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied.

Such antecedent balances, if the zamíndár shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual taluqdár, and must be recovered in the same way as other debts by a regular suit in the Court.

Disposal of remainder.

*Fourth.*—Any excess that may remain after satisfying the demand of the zamíndár, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the taluqdárs of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluq sold, or on any part of it.

Under-tenants free to prosecute for price of their interest or compensation.

*Fifth.*—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

Suit not to lie if under-tenant be himself in arrear at time of sale.

*Sixth.*—Provided, however that no taluqdár of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming concelled by sale of the superior taluq, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

When defaulter to receive excess unclaimed.

*Seventh.*—Should no claims upon the purchase-money of a taluq sold as above be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Substitution of Government securities for cash in deposit.

*Eighth.*—It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such security to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

## SCHEDULE IV.

(*See Section 224.*)

PART I.—*Suits.*

| Description of suit. | Period of Limitation. | Time from which period begins to run |
|---|---|---|
| 1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contrat expressly providing that ejectment shall be the penalty of such breach. | One year . . | The date of the breach. |
| 2. For the recovery of an arrear of rent—. (*a*) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 103. | Six months . . | The date of the deposit. |
| (*b*) in other cases . . . . | Three years . . | The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails. |

PART II.—*Appeals.*

| Description of Appeal. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 3. From any decree or order under this Act to the Court of a District Judge. | Thirty days . . | The date of the decree or order appealed against. |
| 4. From any order of a Collector under this Act to the Commissioner. | Ditto . . | The date of the order appealed against. |

PART III.—*Applications.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 5. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree. | Three years . . | (1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review. |

## STATEMENT OF OBJECTS AND REASONS.

The history of landlord and tenant legislation in Bengal, and of the circumstances which have led to the preparation of the present Bill, is given in full detail in the papers which have been published. A very brief summary of it must suffice here.

Immediately before the Permanent Settlement was made, the Court of Directors, in conveying instructions to the Government here regarding it, wrote as follows:—*

"In order to leave no room for our intentions being any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the raiyats and subordinate landlords, it being our intention, in the whole of the measure, effectually to limit our own demands, but ~~not to~~ depart from our inherent right as sovereigns of being the guardians and protectors of every class of persons living under our Government."

2. In confirmity with these instructions, an article was inserted in section 8 of Regulation I of 1793, by which the Permanent Settlement was effected, expressly saving the right of the

* Harington II, pp. 191-92

Government to legislate for the protection of persons having interests in the soil below those of the zamíndárs. It need hardly be said that any such saving was, strictly speaking, superfluous, inasmuch as the Government of an agricultural country like India would, apart altogether from it, be entitled, or rather bound, to legislate from time to time, as occasion might require, for the protection of the inferior occupants of the soil. But the article is important as showing that the view taken of the relations between the Government, the zamíndárs and the inferior landholders under the Permanent Settlement was the same in 1793 as it is to-day.

The article runs as follows :—

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor General in Council thinks it necessary to make the following declarations to the zamíndár independent taluqdárs and other actual proprietors of land :—*First*, it being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation, are most helpless, the Governor General in Council will whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil; and no zamíndár, independent taluqdár or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

3. Again, it was enacted by section 67 of Regulation VIII of 1793 (a Regulation re-enacting with modifications, the rules for the Decennial Settlement) that proprietors should be bound by the restrictions, in their kabúlyats, and the 9th of these, as stated by Harington (Vol. II, page 255), was that implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of the raiyats and the collections from under-tenants and agents of every description, as well as from all other persons whatever."

4. The most important enactment passed in pursuance of these provisions is Act X of 1859, the subtantive provisions of which, either in their original form or as re-enacted in Act VIII of 1869* (of the Bengal Council), still govern the relations of landlord and tenant in Bengal.

The effect of Act X of 1859, is admitted to have been on the whole beneficial; but on certain important points it cannot be considered a success. In particular, as will presently be explained at greater length, it placed the right of occupancy, which it recognized in the tenant and the right to enhance rent which it recognised in the landlord, on a most precarious footing. The result of this has been that, as usually happens with a law which is uncertain in its operation, it has added strength to the strong and further weakened those who were already weak. In Bihár, where the social and economical conditions of the country tend to give the landlords the upper hand, we hear of tenants rack-rented, subjected to *quasi*-feudal oppressions and arbitrarily ousted from their holdings; in Eastern Bengal, on the contrary, where circumstances favour the tenants, we hear of landlords who not only cannot obtain the enhancements of rent to which they are entitled, but at times, when tenants combine against them, cannot even recover what is admitted to be due at existing rates.

5. The difficulties connected with Act X of 1859 began to be felt at an early period. It received the assent of the Governor General on the 29th of April, 1859, and before the end of 1863 its amendment had been suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue authorities of the North-Western Provinces. Of late years, successive Lieutenant-Governors of Bengal have borne witness to the existence of chronic evils, which nothing short of comprehensive legislation could cure. In 1873, Sir George Campbell had no doubt that the Government would be eventually compelled to deal with the whole question of the relations of landlords and raiyats in Bengal. In 1876, in the course of the debates on the Agrarian Disputes Act, a measure devised to meet the difficulties between landlords and tenants in Eastern Bengal, the Hon'ble Kristodás Pál, a representative of the zamíndárs, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a dead-lock. Sir R. Temple concurred in the opinion that some principle for determining rates of rent should be fixed by legislation, and in August, 1876, proposed to introduce a Bill to define the principles on which the rights of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realizing arrears of rent in undisputed cases, to extend the definition of "occupancy-raiyat," and to render the interest of a raiyat of that class liable to sale for default in paying rent and transferable by private agreement.

These proposals had not, however, been fully considered when Sir R. Temple, early in 1877, made over charge of the Lieutenant-Governorship to Sir Ashley Eden; and it was then arranged that the larger amendment of the law should be deferred, and a Bill providing only for the realization of undisputed arrears introduced at once.

6. It was, however, found when the Bill was introduced, that it was impracticable to limit its scope in this way. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognized that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent, and possibly sub-letting. It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the existing law not ostensibly affected by them; and in February, 1879, a majority of the Select Committee on the Bill recommended that the whole subject of a revision of the Rent Law should be once for all fairly faced. This proposal was supported by Sir Ashley Eden; and in April, 1879, the Government of India sanctioned the formation of a Commission to prepare a digest of the existing statute and case law, and to frame the draft of a consolidating Bill.

7. Meanwhile a separate discussion had been proceeding with reference to the abuses already mentioned as prevailing in the relations between landlords and tenants in Bihár. As far

* Throughout this Statement Act X of 1859 only will be referred to. It will be understood that what is said regarding it applies equally to Act VIII of 1869.

back as the year 1868, Lord Lawrence, then Governor General, had recorded a minute relating to the dispressed state of the peasantry in Bihár, in which he had said that he believed "that it would be necessary for the Government sooner or later to interfere and pass a law which should thoroughly protect the raiyat and make him—what he is now only in name—a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it." Again, in the years 1875 and 1876, when the condition of Bíhár came under consideration, it was acknowledged that some remedies must be applied. Two years later, the Lieutenant-Governor appointed a committee of experienced Bihár officials to advise upon the matter; and on the 8th March, 1879, they submitted their report, proposing so many changes of the existing law that they did not consider that the requirements of the case would be properly met by a mere amending Bill. They were of opinion that the whole rent law should be re-cast.

8. Thus, two independent committees arrived simultaneously at the same conclusion, namely, that the time for a complete revision of the existing law had arrived.

The report of the Bihár committee was referred to the Rent Law Commission, which was appointed under the sanction referred to above (paragraph 6), and that Commission, on the 19th June, 1880, submitted its report with a draft Landlord and Tenant Bill, which having been revised by the Government of Bengal, has furnished the basis of the present Bill.

9. Before proceeding to give the explanations usual in a statement of this description, it should be mentioned, first, that these explanations will, as far as possible, be confined to points on which it is proposed to alter the existing law, and secondly, that the Bill is no more than it purports to be, namely, a Bill to amend and consolidate existing enactments.

10. With reference to this latter remark, it will be observed that the Bill prepared by the Rent Commission was intended to be in some sense a code of the law relating to agricultural tenancies. It, in many instances, incorporated portions of the common law or case law which have not hitherto been embodied in any legislative enactment in this country. In this respect the present Bill does not follow that of the Rent Commission; but it must not be inferred from this that the views of the Government of India on the important subject of codification have undergone any change. It may be desirable, at some future time, to carry out the design of the Rent Commission in its integrity, and make the Bengal Tenancy Act a complete and self-contained statement of the whole law; but it has been considered that the work of codification is one to be undertaken at a season of leisure, and not at a time like the present, when those who are responsible for the framing of our legislative measures are absorbed in the consideration of important substantive amendments of particular portions of the existing law, and are consequently unable to devote to the law as a whole that amount of attention which would be required in order to carry out the work of codification with any prospect of success.

In the following portions of this Statement the order of the Bill will as far as possible, be adhered to.

## CHAPTER I.—*Preliminary.*

11. The Bill, it will be observed (section 1), extends by its own vigour to the whole of the territories under the administration of the Lieutenant-Governor of Bengal, except the town of Calcutta, the Division of Orissa and the Scheduled Districts.

The Lieutenant-Governor is specially empowered by section 1 to extend the whole Bill, or any portion of it, to the Orissa Division, with the sanction of the Governor General in Council, and he can, with like sanction, extend the whole, or any portion of it, to any Scheduled District under the power conferred on him by the Scheduled Districts Act.

12. The classes of tenants, to which the provisions of the Bill apply, are (section 3 (8) ) tenure-holders, raiyats, under-raiyats and persons having a certain interest in *bastu* land, which will be found explained further on under the head of Chapter VII.

13. The term "tenure-holder" as used in the Bill is defined (section 3 (3) and (4) to include what are commonly known as undertenure-holders, that is to say, darpatnidárs, sepatnidárs, darijaradars and such like; and also tenants of the class hitherto known as raiyats at fixed rates. The inclusion of tenants of this latter class in the definition is convenient from the draftman's point of view, but is, it is believed, otherwise of little importance, inasmuch as the incidents which are attached to their holdings place them to all practical intents and purposes on the same footing as tenure-holders.

14. The term "raiyat" has, following the Bill prepared by the Rent Law Commission, been limited to tenants holding land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes, except where *bastu* or homestead land is included in a raiyat's agricultural holding, in which case it will be treated in the same way as the rest of the holding, and he will be deemed to hold it as a raiyat.

15. Except as just stated, no attempt has been made to define the terms "tenure-holder" and "raiyat," or to settle the distinction between these two classes of tenants.

The importance of this distinction for the purposes of the Bill has not been overlooked, nor has the possibility that cases may occur near the line of separation between the two classes, in which a doubt will arise as to whether the tenant is a tenure-holder or a raiyat; but it is believed that the distinction is generally well understood, and that, save in exceptional cases, no difficulty will arise. However this may be, no complete definition has yet been suggested which would not be certain to give rise to difficulties greater than those which it is intended to remove.

16. Under-raiyat, as defined in the Bill, includes all tenants holding whether immediately or mediately below a raiyat.

17. Section 4, besides saving certain special laws which would, as a matter of course, be saved in a general enactment of this description, provides that nothing in the Bill "shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions."

A saving of this description is unavoidable in a measure which, as already observed, does not purport to be an exhaustive code, and its importance will be seen from the illustration appended, which shows that it will protect such rights as rights of occupancy enjoyed under a custom by under-raiyats, a class of tenants protected only to a limited extent by the Bill.

### CHAPTER II.—*Of the distinction between khámár and raiyatí land.*

18. The second chapter of the Bill deals with the distinction between "khámár land," or the private land of the proprietor, and raiyatí land, or the land destined for occupation by raiyats. The importance of this distinction arises chiefly from the circumstance that raiyats occupying land of the latter class will, under the Bill, enjoy a much larger measure of protection than those occupying land of the former class. Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country, under the existing law, to get into their own hands as large an amount of the raiyati land as possible and convert it into khámár land, it has been thought necessary to make it clear by the definition that the existing stock of khámár land cannot hereafter be increased, and further to enact (section 6) that all land which is not khámár land shall be deemed to be raiyatí land, and that all land shall be presumed to be raiyatí land until the contrary is proved.

19. In Bihár, owing to the large extent of the khámár, or, as it is there termed, "zeraat" land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance; and there may be other exceptional tracts where the necessity of distinguishing clearly and finally between khámár and raiyatí land may prove to be pressing. To meet such cases, it is further thought necessary to provide (sections 7 to 13) for making a complete survey and record of the existing khámár or zeraat, and thus preclude all possibility of future disputes on the point.

### CHAPTER III.—*Of Tenure-holders generally.*

20. The alterations which it is proposed to make in the existing law regarding tenures, are not of great importance.

Section 14 converts the present raiyats at fixed rates into tenure-holders, but, as already explained (*supra*, paragraph 13), the change is unimportant.

21. Section 20, which saves to a landlord in a temporarily-settled tract a right to raise the rent of any tenure when a new settlement of the revenue is made, is new; but it may be defended as being in accordance with the views that prevail as to the relative position of the landlord, the tenant and the Government in such tracts. The Government has an undoubted right to raise its revenue on the occasion of a fresh settlement. Of this right no act of the landlord can deprive it; and accordingly, if the landlord were to be bound by a grant at fixed rates, made by him so as to extend beyond the term of the settlement, the result would be that, on the occasion of a new settlement, he might be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenant.

22. The Rent Commissioners observe that there are in the existing law no express provisions for the enhancement of the rents of tenures, and that the want of a definite enactment on the point has given rise to much expensive litigation. The sections of the Bill relating to this matter are based on those drafted by the Commissioners, and the grounds on which they rest will be best seen from the following extract from the Commissioners' report:—

"We have," they say, "provided for the enhancement of the rent of tenures and under-tenures, by enacting that, in any case in which such rent is liable to enhancement,—there are cases in which it is not so liable,—it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity, or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable, but so that the profit of the tenure-holder or undertenure-holder shall not (in the absence of certain special circumstances, to be noticed hereafter) exceed thirty per centum of the balance which remains after deducting, from the gross rents payable to him, the expenses of collecting such rents. It may be observed that, according to the rule contained in section 8 of Regulation V of 1812, ten per cent. of the balance just mentioned was allowed to the tenure-holder. This section was repealed by Act X of 1859, but, by some oversight, no provision was substituted by this Act, though the principle, as being fair and equitable in itself, and usual by reason of the provisions of the Regulation, was, on several occasions, acted upon by the Courts after that Act was passed. It appears to a majority of us, after careful consideration, that the limit of *ten* per cent. is too low, and we have accordingly allowed a higher limit, namely, that of a maximum not exceeding *thirty* per cent. in ordinary cases.* We have provided for the special and *jangalbari* well-known case of holdings by enacting that, when more than one hundred bighás of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance above-mentioned, and the Court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. In order to prevent these new provisions from working hardship by any sudden and great change, we have annexed the following checks:—(*a* the enhanced rent shall not in any case be more than double the previous rent: (*b*) the Court may direct that the enhancement shall take effect gradually, or, in other words, that the rent shall increase yearly during any number of years not exceeding five, until the limit of the enhancement allowed has been reached: and (*c*) that rent once enhanced shall not be altered for ten years unless on account of alluvion or diluvion."

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* Mr. Justice Levinge mentions, in his Minute on Act X, a case in which *two-thirds* (he does not say, whether of the gross or net collections) were given to the landlord and the residue to the middleman. If the calculation was here made on the net collections, the collection expenses being at ten per cent., the middleman got 30 per cent., being 100—2(100 10)—10.

23. The only further points calling for notice in connection with these sections are, that it has been provided that the tenure-holder's profits shall never be less than 10 per cent. of the net balance, that the provision regarding *jangalbari* tenures has been made applicable to all such tenures irrespective of the area comprised in them, and that a clause has been added providing that, when a tenure-holder has made improvements other than those referred to by the Commissioners, the Court may allow him such amount, by way of profit, as it thinks fit, provided it be not less than 10 per cent.

24. In section 26, it is enacted that a permanent tenure-holder shall not be ejected by his landlord except under a decree of Court passed on the ground that he has broken a condition, on breach of which he is, under a written contract between him and his landlord, liable to be ejected.

25. The alterations which are made in the existing law by sections 27 to 35, relating to the registration in the landlord's serishta of transfers of, and successions to, permanent tenures, are (so far as they seem to call for notice) as follows:—

(*a*) A fee is made payable in respect of the registration of every succession and every transfer other than a transfer on a sale for arrears of rent.

(*b*) An application for the registration of a voluntary transfer or a succession may, instead of being made to the landlord, be made to a Revenue-officer, who will serve a notice on the landlord requiring him to register.

(*c*) Where a tenure is sold in execution of a decree other than a decree for arrears of rent, the Court will cause a notice to be served on the landlord requiring him to register the transfer.

(*d*) If a landlord refuses or neglects to register for one month after he is bound to do so, the persons interested may apply to the Civil Court to compel him to register.

(*e*) Similarly, if the party or parties concerned do not apply for registration within six months from the date of a voluntary transfer or a succession, the landlord may apply to have him or them compelled to allow the registration and pay the requisite fee.

(*f*) The landlord is required to give to the parties concerned copies of entries in his register; the first copy to be given free charge, subsequent copies on payment.

(*g*) The Board of Revenue is empowered to make rules regulating registration.

26. The proposal of the Rent Commission to extend the registration system to occupancy-holdings has not been adopted, as it is feared that there would be great difficulty in bringing home to persons of the raiyat class the details of such a system.

## CHAPTER IV.—*Of Patní Tenures.*

27. The law relating to patní tenures is left substantially unchanged. The various proposals which have been made for the amendment of the summary sale procedure have not been overlooked; but it is thought that, as they touch only matters of detail relating to an institution of a very special nature, they would be best considered at the Select Committee stage of the Bill when it is hoped it may be found possible to simplify the form of the law very much without materially changing its substance. Meantime, the existing enactments have been thrown into Schedule III of the Act, and are made operative by section 42.

## CHAPTER V.—*Of Raiyats with a Right of Occupancy.*

28. Chapter V, which treats of the acquisition of the occupancy-right and of the incidents generally of that right, is one of the most important chapters in the Bill.

It will be seen, from the papers that have been published in connection with this measure, that a controversy has arisen, and has been conducted on both sides with much ability and research, as to whether some such right as that which we usually term a right of occupancy did not originally belong, and ought not now to be recognised as belonging, to all raiyats in Bengal except those whose occupation of the land is of a merely transitory nature. It is unnecessary now to enter upon the merits of that question, inasmuch as, after a full consideration of the position, it has been determined that the legislation to be undertaken by the Government shall proceed on the assumption that the occupancy-right is to be recognised as appertaining only to such tenants as may be shown to be in some special sense settled or permanent. But the problem of defining the class of tenants in whom such a right should be recognised is, when limited by this assumption, one of considerable difficulty.

29. The conditions requisite to confer the status of the "khúdkásht raiyat," so frequently referred to in our revenue enactments and records, may in earlier times, and especially when thoroughly organized village-communities prevailed, have been to a certain extent definite and ascertainable; but, in spite of all the learning and research which have been brought to bear, they are not now to be discovered. The probability is that they were always very vague; that, notwithstanding their vagueness, no difficulty arose so long as land was abundant, the pressure of the Government revenue heavy, and the status of a privileged cultivator of little value; and that it was only with the progress of agriculture, the increase in the value of landed property and the consequent disputes regarding interests in land, that the need of some more precise definition came to be felt.

30. A definition framed under such circumstances would necessarily be to a great extent artificial, and in moulding its details there would necessarily be a good deal of room left for considerations of equity and expediency. We find accordingly, on referring to the proceedings connected with Act X of 1859, that those who framed that Act assumed a considerable latitude in settling the conditions on which the occupancy-status should be acquired. In the Bill as read a first time, they proposed to confer on every "resident" raiyat a right of occupancy in the "land held by him," and they justified this on the ground that the word "khúdkásht," as used in the Regulations, seemed to be synonymous with "resident;" but subsequently, it having been pointed out to them by the Revenue authorities of the North-Western Provinces that "residence was not always a condition of occupancy," they adopted the rule embodied by them in the Act, namely, that twelve years' holding of the same land shall give a right of occupancy in that land. This rule, which was obviously to a large extent, artificial, was copied by them from a similar rule which was issued by the North-Western Provinces Government, apparently as a mere executive suggestion to its officers, in the year 1836, as that "most consistent with the existing practice and recognized rights" in those provinces. The only feature common to the two rules is that of a raiyat in some sense permanent in, or settled in, the locality, and it would seem that the persons who framed those rules considered that as long as they maintained this feature, they were at liberty to define, in such manner as they might think equitable and expedient, the circumstances which should be taken to constitute the requisite degree of permanency or settlement. This is quite intelligible in the view above suggested, that, though the status of the khúdkásht raiyat was still a recognized institution, the conditions requisite to establish it were so vague that they could not be described otherwise than as resting on a certain ill-defined degree of permanency in a particular locality.

31. Act X of 1859 is admitted to have done much towards improving the relations between landlord and tenant, but, in this particular matter of defining the conditions requisite to the establishment of a right of occupancy, it cannot be pronounced a success. It would be unjust to charge this want of success altogether against the Act itself. It has been held by the highest judicial authority that the provisions of the Act with respect to the establishment of the right of occupancy should be construed as cumulative and not as exhaustive or exclusive of all other modes of establishing that right; but, as a matter of fact, the Act has come to be regarded as a Code complete in itself, and as superseding all other modes of establishing the right. Its effects has consequently been to injure seriously the rights of the old established raiyats, by throwing upon them the burden of proving, not merely that they have held for twelve years in the village or estate, but further that they have so held in every one of the particular fields or plots, in respect of which they claim to have rights of occupancy—a burden which, it need hardly be said, it is impossible for them, in the absence of any trustworthy agicultural records to discharge. And, as regards the acquisition of rights of occupancy by new comers,—a matter which is always regarded as absolutely necessary for the prosperity of the agriculturist class in this country,—it becomes almost impossible under a law which enables the landlord to prevent it by the simple device of shifting the tenant from one holding to another before the period of twelve years has run out.

32. It is unnecessary to state here the various remedies which have been proposed for these evils. They will be found described and discussed in paragraph 61 of the letter of the Government of India to the Secretary of State, No. 6, dated 4th March, 1882. It is enough to state the amendment of the law which the Government, after a very full discussion of the question, has resolved to propose. That amendment follows with certain modifications a suggestion of the Famine Commissioners, and consists in making the acquisition of the status of the khúdkásht raiyat, or, as he is termed in the Bill, the "settled raiyat," depend not on the holding of one and the same plot of land for twelve years, but (section 45) on the holding of any raiyatí land (whether the same or not it does not matter) in the same village or estate for a period of twelve years whether before or after the passing of the Act. The raiyat may, by ceasing for one year to hold land as a raiyat in the vilage or estate (section 46), lose the status so acquired, but while it continues to adhere to him, he will, notwithstanding any contract to the contrary, be deemed to have acquired a right of occupancy in any raiyatí land held by him as a raiyat in the village or estate after the 2nd March, 1883, the date on which it is proposed to introduce the Bill. It should be added that, in order to obviate the effect which the minute partitions of estates, so common of late in certain parts of the country, would have in reducing the area in respect of which a settled raiyat of an estate would enjoy his status as such, it is in effect provided by section 43 that the estate shall, for the purpose of this portion of the Act, be taken to be the estate as it would have existed if no partition had taken place since the 1st of January, 1853.

33. It will be observed from the above that a right of occupancy is acquired by a settled raiyat holding raiyatí land "*notwithstandinding any contract to the contrary.*" It is considered essential to carry the enactment to this extent. As observed by the Government of India in paragraph 85 of their letter No. 6 of the 21st March, 1882, "such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government but also of the almost unanimous opinions of the Bengal officers."

34. These provisions apply only to raiyatí land. The acquisition of a right of occupancy in the landlord's khámár land is, by section 49, kept on the same footing as under the existing law.

35. It is only necessary to add as regards the acqusition of the right, that it is provided by section 44 of the Bill that every raiyat, who immediately before the commencement of the Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when the Act comes into force, become an occupancy-raiyat of that land for the purposes of the Act, and that, (section 48) a right of occupancy may be acquired by a grant from the landlord.

36. As regards the probable effect of the new provisions regarding the acquisition of the right of occupancy, it should be stated that no great increase of the area at present subject to that right is looked for from them : indeed, if the statement which has been made by a high authority, that 90 per cent. of the raiyats in Bengal already have that right, is correct, any such increase would scarcely be possible, but what is hoped for is first, that a stop may be put to the vigorous efforts, which are at present being made by landlords in some parts of the country, to withdraw land from the operation of the right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined ; and secondly, that where occupancy-rights do as a matter of fact exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat.

37. Section 50 states in general terms the more important incidents of the occupancy-right. They attach to the tenancy notwithstanding any contract between the landlord and raiyat and are briefly as follows :—

(1) the raiyat may use the land in any manner which does not render it unfit for the purposes of the tenancy :
(2) he may make improvements on it as provided by the Bill.
(3) he must pay rent at fair and equitable rates as determined by the Bill.
(4) he cannot be ejected except under a decree passed for breach of certain conditions or for using the land in such a way as to render it unfit for the purpose of the tenancy ;
(5) he may sublet the land;
(6) his interest is to be transferable subject to certain rights reserved to the landlord and
(7) his interest is to descend as if it were land.

38. Several of these incidents will be referred to at greater length in connection with the portions of the Bill specially relating to them. The sixth falls to be considered here, inasmuch as most of the remaining sections of the chapter are occupied with the rules regulating the rights reserved to the landlord when an occupancy-holding is transferred by sale, mortgage, gift or bequest.

The question whether the right of occupancy should be made by express enactment freely transferable every where, as it is at present held to be by custom throughout a very large portion of the area to which the Bill applies, has been most fully and carefully considered. It has to be looked at from two points of view, namely, first, from the point of view of the landlord, and secondly, in the interests of the tenant.

39. From the former point of view the question presents comparatively little difficulty. The landlord is concerned only to see that we do not allow an objectionable tenant to be forced on him against his will, and this we can readily guard against by giving him a right of pre-emption, or something equivalent thereto, in every case of transfer. It has accordingly been provided that, in cases of voluntary sale, gift or bequest, the landlord shall have a right to the purchase at a price to be fixed by the Civil Court ; that in the case of sale in execution of a decree, when the landlord and any other person bid the same amount, the landlord shall have the right of pre-emption ; and that, when an order is passed for foreclosing a mortgage of an occupancy-right, the landlord shall be allowed an opportunity of paying in the amount of the mortgage-debt and taking the place of the mortgagee. The only doubt that has been felt about these provisions is whether, in the case of a voluntary sale, the landlord should not be required, if he exercised his right of pre-emption, to pay the price at which the raiyat has actually agreed to sell the occupancy-right instead of a price to be fixed by the Court ; but, on considering the difficulties by which the right of pre-emption would be clogged in cases of collusion between the vendor and purchaser, and in cases in which a spiteful neighbour might be willing to pay an exorbitant sum for an occupancy right with a view to harassing the landlord, it has been thought best to put the case of voluntary sale on the same footing as those of gift and bequest.

40. Looking at the question of transferability next from the point of view of the occupancy-raiyat's interest, the Local Government and the Government of India have come to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability, which the prevailing customs show to existing rights of this class in almost all parts of the country. The existence of such a tendency indicates—what, indeed, is clear from other evidence—that those most concerned regard the quality of transferability as an important incident of the right : and it cannot be doubted that the enactment of a law absolutely forbidding transfer would, even if it saved existing customs, be regarded as a hardship. It may be added that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance.

41. That the powers of transferring and sub-letting which the Bill recognizes may in time lead to a state of things, in which the great bulk of the actual cultivators would be not occupancy-raiyats but under-raiyats with but little protection from the law, is indeed within the range of possibility; but, if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it. There is nothing in the present Bill which ought in any way to hamper them in doing so—nothing to affect the principle that, in an agricultural country like India, the great mass of the actual cultivators of the soil whoever they may be, and however they may have come into the possession of the land, must be protected by the law.

42. The only other provision of Chapter V which appears to call for notice here is that contained in section 56, and is to the effect that, where a landlord, by way of pre-emption under the foregoing sections or otherwise, acquires an occupancy-right in his own land, any tenant, who subsequently takes the land from him, shall have a right of occupancy in it, and if the rent of the land was previously payable in money, shall be entitled to hold it at a money-rent to be fixed under the Act. There is nothing in the Bill to prevent a landlord, so acquiring an occupancy-right in land, from keeping the land in his own hands and cultivating it by his servants or by hired labourers. All the section would enact is that, if he chooses to let it to a tenant, that tenant shall at once acquire an occupancy-right. This seems necessary in order to guard against the possibility of a landlord buying up on a great scale the occupancy-rights existing on his estate or tenure with a view to locating ordinary raiyats on the land. To a landlord, who buys an occupancy-right, as contemplated by the pre-emption sections of the Bill, merely with a view to excluding an intending purchaser whom he objects to have as his tenant, there would be no appreciable hardship in the restriction.

## CHAPTER VI—*Of the rent payable by Occupancy-raiyats.*

43. Chapter VI is devoted to the important subject of the rents payable by occupancy-raiyats. In regard to this particular matter, as in regard to that of the acquisition of the right of occupancy, Act X of 1859, whether owing to its inherent defects or to the peculiar construction put upon it by the Courts it is unnecessary now to enquire, has not proved a success. Leaving out of consideration the matter of additions to the rent of a holding on account of an increase of its area, a matter which is relegated to a completely separate division of the present Bill, Act X of 1859 provided by its 17th section that the rent payable by an occupancy raiyat should be liable to enhancement only where—

*1st*—its rate was below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent, or

*2nd*—the value of the produce or the productive powers of the land had been increased otherwise than by the agency or at the expense of the raiyat.

44. Having thus stated the cases in which the rent was to be liable to enhancement, the Act stopped, giving no indication, except such as might be gathered from the statement of those cases, as to the extent to which the Courts were to enhance the rent. In the first of the two cases, no difficulty would arise from this, as the intention of the Act in respect of that case was clear enough, but in the second of the two cases, the question as to the limit of enhancement gave rise to an important discussion, which was at length brought to a close in what is known as "the great rent-case." The rule laid down in that case is commonly spoken of as "the rule of proportion" and is to the effect that the enhanced rent should bear to the previous rent the same ratio as the increased value of the produce or increased productive power bears to the value or productive power at the time the previous rent was fixed.

45. This rule, whatever may be said for it on theoretical grounds, has proved to be absolutely unworkable by the Courts in practice, inasmuch as it throws on them the necessity of undertaking elaborate and laborious inquiries into economical questions, with which they are altogether incompetent to deal, and which have reference not merely to the present time but also to past and possibly very remote times, for which no such evidence as could be acted on by a Court of Justice is likely to be forthcoming. Moreover, it necessitates enquiries, which are of such a nature that they could with advantage be undertaken only generally, on a great scale, and once for all, being, instead of this, undertaken over and over again in a most imperfect and unsatisfactory manner in individual cases.

46. The result of this is that, though the right of the landlord to enhance is distinctly recognized by the law, and though definite rules are laid down for its enhancement, the law has become to a great extent a dead letter.

The most important object of the chapter we are now considering is, while guarding and limiting the right to enhance in certain respects, which will be presently noticed, to put it on such a footing that it will be readily enforceable in practice; and the chief means adopted for attaining this object is that of separating off the statistical and economical inquiries of a general nature, which have just been referred to, and providing for their being undertaken once for all on a large scale by Revenue-officers.

47. Passing from these preliminary observations to the details of Chapter VI of the Bill it will be seen that section 60 provides that, except on account of an addition to the area of the holding by alluvion or otherwise, a money-rent payable by an occupancy-tenant shall not be enhanced except by a decree of a Civil Court under the Bill, or by a contract of the nature described in the foregoing section.

48. It is considered, for reasons similar to those stated above in paragraph 33, that it would be destructive of the objects of the Bill if occupancy-raiyats were left perfectly free too deprive themselves by their contracts of the right to hold at fair and equitable rates secured to them by the law. But, on the other hand, absolutely to prevent such contracts would, it is thought, involve too great an interference with the freedom of the parties. A middle course has accordingly been adopted in section 59, which provides that a money-rent payable by an occupancy-raiyat may be enhanced by a contract in writting, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf, and which goes on in its second sub-section to enact that a Revenue-officer shall not approve or register such a contract until he has satisfied himself that it is fair and equitable, and that he shall be absolutely debarred from registering any contract, by which a raiyat engages to pay a rent more than six annas in the rupee higher than the existing rent, or more than one-fifth* of the estimated annual value of the gross produce of the land.

49. This 59th section, which, it will be remembered, relates only to the enhancement of the rents of existing tenancies, is supplemented in section 61 by a somewhat similar provision applicable to cases in which a settled raiyat comes in as a new tenant on land previously held by another tenant at a money-rent. Here, too, it is considered that the objects of the law might be defeated if the parties were left absolulely free to contract; and it is accordingly provided that a settled raiyat, taking land under the circumstances referred to, shall not be bound to pay for it a higher rent than that paid by the previous tenant, unless that higher rent has been fixed by a contract, registered and approved as already described.

50. Turning now to the matter of enhancement by a decree of the Civil Court, the sub-divisions of Chapter VI which are marked B and C proceed on the assumption that there are, at least in some parts of the country, certain rates of rent generally recognised as the rates payable by occupancy-tenants for the various classes of land held by them. Where this is so, it would, it is presumed, be not very difficult for a Revenue-officer to ascertain those rates, and then, starting from them as a basis, and taking into account such changes in the productive powers of the soil and in the prices of produce as may have occurred since they were fixed, to prepare tables of the enhanced rates, which, subject to allowance in exceptional cases, might fairly and equitably be demanded by the landlord for each class of land under the existing conditions. The Revenue-officer, it is thought, might further show in his tables the average gross produce of each class of land and its estimated value. Supposing this is to be done, the Civil Courts would be relieved almost entirely of those economical and statistical enquiries, which at present are involved in enhancement-suits. They would accept the rates and produce-statistics shown in the tables as *primâ facie* correct for lands of the classes to which the tables referred, and might restrict themselves to considering the comparatively simple and limited questions as to whether the particular lands in question in the suit belonged to the class alleged, and whether there were any exceptional circumstances connected with them which would require the rent to be fixed at a different rate from that set down in the table.

51. It is, of course, well understood that there would be many parts of the country for which, owing to the non-existence of recognized rates of rent or to the great varieties of the soil, no such tables could be prepared, and further that, even where it is possible to prepare such tables, their preparation must be a work of time. With a view to these considerations, the Bill has been so drawn as to provide, first, in sub-division B of Chapter VI, for suits to enhance money-rents where a Table of Rates has been prepared, and secondly, in sub-division C, for such suits where a Table of Rates has not been prepared.

52. It will be convenient, in explaining the details of these portions of the Bill, to begin with the latter set of provisions. The cases, in which a suit may be brought to enhance the money-rent of an occupancy-holding situated in a tract, for which a Table of Rates has not been prepared, are stated in section 74. They will be found to be in the main the same as those provided for in the section of Act X of 1859 referred to in paragraph 43, the only difference of sufficient importance to call for notice here being that, for the purpose of estimating the increase in the productive powers of the land or in prices, on which a right to enhance depends, the Court is not compelled, as under the present law, to look to the time at which the rent was fixed, but, when that time cannot be ascertained (as it frequently cannot), or when the productive power and the prices prevailing at that time are undiscoverable, may take, for the purpose of comparison, any other time which may appear to it fair and equitable.

53. Section 75, supplying the defect in Act X of 1859 referred to above (paragraph 44), fixes the limits up to which the Court is to enhance in cases in which the enhancement is claimed on the ground of an increase in the productive powers of the land or of prices. It provides that, if the increase has been effected wholly by the agency or at the expense of the landlord, he shall be entitled to the whole benefit of it; that if it has been effected partly by the agency or at the expense of the landlord and partly by the agency or at the expense of the tenant, the benefit shall be divided between them in such shares as, having regard to all the circumstances of the case, the Court thinks fair and equitable; and that, if it is not proved that the increase has been effected by the agency or at the expense either of the landlord or of the tenant, each of them shall be entitled to one-half the benefit: provided in this last case that the enhanced rent shall not bear to the previous rent a higher proportion than the increased productive powers or increased prices bear to the former productive powers or former prices, as the case may be. Thus the rule of proportion, instead of being, as it is at present, under the decision in the "great rent-case," the measure of enhancement in all cases, will merely supply a maximum

* See as to this limitation, para. 54 *infra*.

limit in one of the three cases dealt with by section 75; and, as it is not apprehended that landlords will often seek to press their rights of enhancement to the full extent, it seems unlikely that it will give rise to any considerable difficulty.

54. The only other rule relating to the limit of enhancement contained in section 75 is the concluding provision, that the enhanced rent shall not in any case exceed one-fifth of the estimated average annual value of the gross produce of the land in staple crops calculated at the price at which raiyats sell at harvest-time. This limit has been substituted for that of one-fourth originally proposed, as the present Lieutenant-Governor of Bengal considers that one-fourth of the value of the average crop would be too high a limit. It is to be understood, however, that the point is still under the consideration of the Government.

55. Coming next to the scheme for enhancement by means of a Table of Rates, it will be seen that section 62 empowers the Local Government to direct a Revenue-officer to prepare for any local area, with the aid of assessors, a table showing, for each class of land comprised in that area, the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land, and the average value of that produce. The land is to be classified (section 63 (*a*) according to the nature of the soil, situation, means of irrigation and other like considerations, and section 64 enacts that, in fixing the rates for each class, regard is to be had—

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;

(*b*) to the value of the average gross produce of land of that class, and the cost of raising that produce, about the time those rates were fixed, or, where these matters cannot be ascertained for that time, about such other time as it may be fair and equitable to take for the purpose of comparison;

(*c*) to the value of the average gross produce and the cost of raising that produce at the time the table is prepared; and

(*d*) to the following rule, namely, that, where the rate of rent for any class of land is raised on account of an increase in the value of the produce, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

The section concludes with a proviso, corresponding to that mentioned above in connection with section 75, limiting the enhanced rate of rent fixed for land of any class to one-fifth of the average gross produce of land of that class.

56. Sections 65 to 69 provide for a preliminary publication in the vernacular language of the table prepared by the Revenue-officer; for the consideration of objections urged against it by those interested; for the submission to the higher Revenue authorities, and by them to the Government, of the table, with a report setting forth the grounds of the Revenue-officer's decision on each point, and of all objections preferred; and for the further publication of the table when finally settled and approved of.

57. A table prepared under these provisions will remain in force for such period, not less than ten years or more than thirty years, as the Local Government may direct, and while it remains in force it will (section 71) be conclusive evidence—

(*a*) that, except as provided by certain clauses to be presently referred to, the rates shown in it for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies; and

(*b*) that the statistics of gross produce and value given in the table are correct.

58. Section 72 empowers the Local Government to charge the expenses connected with the preparation of a table for any local area to the raiyats and their landlords in that local area in such proportions as it thinks fit.

59. Section 73 contains the rules for the guidance of a Court in suits instituted to enhance the rent of an occupancy-raiyat in a local area, for which a table of rates has been prepared, and a glance at it will show what an important simplification of the work of the Court will be effected by the table. The general rule is that the Court shall enhance up to the rate shown in the table for the class of land in question, or, where maximum and minimum rates are shown for land of that class (as will occasionally be the case) to such rate, not higher than the maximum or lower than the minimum, as it thinks fit. It is only in certain exceptional cases that the Court will be required to go behind the rates. Those exceptional cases are of two classes.

60. The first class comprises cases, which may be described with sufficient accuracy for our present purpose as cases in which, owing to some improvement having been effected or having taken place in reference to the land since the commencement of the tenancy, the land has been raised from a lower to a higher class of the table. The rules laid down for cases of this class by the first clause of the proviso to section 73 closely follow the corresponding rules laid down in section 75 and referred to above, paragraph 53. They are to the effect that, if the improvement has been effected solely by the agency or at the expense of the raiyat, the rent shall be fixed as if the land belonged to the lower class; that if the improvement has been effected partly by the agency or at the expense of the landlord, and partly by the agency or at the expense of the raiyat, the rent shall be fixed at such rate intermediate between that of the higher class and that of the lower class as the Court, having regard to all the circumstances of the case, thinks fair and equitable; and that, if it is not proved that the improvement has been effected by the agency or at the expense either of the landlord or of the raiyat, the rent shall be fixed at a rate half-way between the rate of the higher and that of the lower class.

The effect of these rules will be best seen from the illustrations appended to section 73 of the Bill, which are as follows :—

*Illustrations.*

(*a*) The rates shown in the table for land of a certain description are—

When the land is irrigated from a well . . . . . Rs. 4 per acre.
When the land is not so irrigated . . . . . „ 2 „

The holdings of A, B, C and D, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one, existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy; that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows :—

When such land is irrigated from a branch of a river . . . Rs. 4 per acre.
When such land is not so irrigated . . . . . „ 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30: the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

61. The other class of exceptional cases in which the Court will have to go behind the rates is that referred to in the second clause of the proviso to section 73, where the raiyat proves that by contract, or by custom, or on some equitable ground, he is entitled to hold at a rate lower than that fixed by the table for land of the class to which his land belongs; and in cases of this class, the Court is required to fix the rent at the lower rate at which the raiyat proves that he is entitled to hold.

62. To complete this portion of the subject it is only necessary to add that all suits for enhancement, whether under a Table of Rates or otherwise, are by sections 76 to 78 of the Bill made subject to the three rules already referred to under the head of tenures, namely, that a rent shall not be enhanced so as to be more than double the previous rent; that the Court may order the enhancement to take effect by degrees for any number of years not exceeding five; and that, when rent has been enhanced, it shall not be again enhanced for 10 years.

63. How far it will be possible to give effect to the provisions of this chapter regarding the preparation of a Table of Rates it would be difficult to predict. The members of the Rent Law Commission entertained hopes of those provisions being largely used, and they appear to have thought that, in some cases, if the rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. On the other hand, the result of recent inquiries would seem to show that, in some parts of the country, the rates vary so much from holding to holding as to render the preparation of a table impossible or practically useless. It must, however, be pointed out that it will not follow that, because a Table of Rates has not been, or cannot be, prepared for a local area, the landlords of that area will necessarily be reduced to the ordinary procedure by civil suit. They will, in many cases, be able to invoke the aid of a Revenue-officer for the settlement of their rents under the provisions of Chapter XI, which will be noticed in their proper place.

64. Section 79 contains the provisions relating to the reduction of money-rents payable by occupancy-tenants. The cases, in which a claim for reduction is allowed are, with certain modifications in detail, which it is unnecessary to notice here, the same as under the existing law, that is to say, a reduction can be claimed only where there has been a decrease of productive power or of prices; and such cases are so rare that it has been thought unnecessary to lay down any elaborate rules for their treatment. Section 79 therefore simply provides that, when a case for reduction is made out, the Court may direct such reduction as it thinks fair and equitable.

65. The case of rents payable for pasture lands which is provided for in section 80, is likewise one of no great practical importance, inasmuch as such lands are but rarely let to a tenant in this country. Accordingly, no provision for the reduction of rent has here been considered necessary, and it has been thought sufficient, as regards enhancement, to provide that a suit to enhance may be instituted on the ground that the rent is below the prevailing rate paid by raiyats of the same class for similar lands in the vicinity, or that, having regard to the increase of rent on arable land in the vicinity, an enhancement would be reasonable. In either of these cases, the Court is empowered to fix the rent at such rate as it thinks fair and equitable.

66. The next sub-division of the chapter relates to rents payable in kind or varying with the crop, and is of greater importance. Section 81 provides that, when the rent is of this nature, the following rules shall apply, namely :—

(*a*) notwithstanding any contract or custom to the contrary, the landlord shall not be entitled to recover, in respect of any portion of the holding on which staple crops (such as rice, wheat, and so forth) are grown, more than half the gross produce or its value; and

(*b*) the landlord shall not, except under a contract in writing, be entitled to recover, in respect of any portion of the holding, on which other crops are grown, any other description or any greater amount of rent than a sum equal to one-half of the estimated average value of the produce of that portion of the holding, supposing staple crops to be grown on it.

67. The only objection which it is apprehended might be taken to these provisions is that in some cases a landlord, whose rent is payable in kind, contributes in the shape of seed, labour or otherwise, towards the production of the crop, recovering the price of his assistance in the form of an additional rent, and that, in such cases, the limits which it is proposed to fix might be too low. To meet this, a sub-section has been added, providing that nothing in the section shall prevent a landlord recovering from the tenant the value of assistance so rendered. The result accordingly will be that though the landlord can no longer include the value of such assistance in the rent, where, by so doing, he would bring the rent above the prescribed limit, he can recover the same amount under another name.

68. Section 82 provides for the commutation into fixed money-rents of rents payable in kind or consisting of the value of a certain share of the actual gross produce.

It provides that an occupancy-raiyat, paying such a rent may, notwithstanding any contract to the contrary, sue to have his rent commuted, and that the Court shall fix the money-rent at its discretion either—

(*a*) according to the prevailing money-rent payable by raiyats of the same class for similar land in the vicinity, or

(*b*) according to the average value of the rent actually received by the landlord during the preceding five years, subject, however, in this latter case, to a deduction of such amount as the Court thinks reasonable, in consideration of the whole risk of cultivation being taken by the raiyat.

69. The remaining provisions of Chapter VI are merely of a supplementary or subsidiary nature. Section 83 provides for the preparation of price-lists, which, when published with the sanction of the Board of Revenue, will be deemed to be conclusive evidence in proceedings under Chapter VI, and will thus save the Courts a certain amount of work, for the performance of which they are but ill-suited.

Section 84 empowers the Board to make rules for the guidance of officers and (as regards certain matters) of Courts acting under Chapter VI, in particular for determining what crops are to be deemed staple crops for the purposes of the chapter.

### Chapter VII.—*Of the Right of a settled Raiyat in Bastu Land.*

70. The Bill prepared by the Rent Commission contained elaborate provisions regarding the use of land for building purposes, which were justified at length in paragraphs 108—113 of their Report. It is unnecessary here to discuss those provisions on their merits. It is enough to say that the present measure is strictly confined to the amendment of the law regarding agricultural tenancies, and can properly deal with the holding of land for building purposes only where the holding of such land is in some sense ancillary to an agricultural tenancy, as, *e.g.*, where an occupancy-raiyat has built himself a house in a village with a view to living near his agricultural holding. In such a case there is so close a connection between his house and his agricultural holding that it would in many cases be vain to protect him in the possession of the holding without, at the same time, protecting him in the possession of the house. Besides the inconvenience he might be put to in being ejected from his house and compelled to reside at a distance from his work, it is clear that, if he were left at the landlord's mercy as regards the house, he would be liable at any time to have pressure brought upon him in regard to the holding also, which he might be unable to resist.

71. When the site of the house is included in an occupancy-holding, the raiyat is sufficiently protected under Chapters V and VI, but, when it is a separate holding, some special provision seems necessary; and it is thought that the requirements of the case will be best met by enacting that every settled raiyat of a village or estate shall, notwithstanding any contract to the contrary, have a permanent heritable and transferable right in any *bastu* or other homestead land in that village or estate which is held by him as the site of a dwelling-house for himself and his family; that a person having such a right shall not be ejected except under a decree of the Civil Court for breach of a condition; that, if so ejected, he shall be entitled to compensation; and that his rent may be enhanced at intervals of ten years, so that it may be equal to the rent paid for similar lands in the neighbourhood, or, at the option of the landlord, so that it may be equal to five per centum of the market-value of the land.

### Chapter VIII.—*Of Ordinary Raiyats.*

72. Chapter VIII deals with ordinary raiyats, that is to say (section 88), raiyats holding raiyatí land but not having a right of occupancy in respect of it. The principle on which this chapter is based is that, while it is desirable to interfere as little as possible between tenants of this class and their landlords, they should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and, further, that the acquisition by them of the status of settled raiyat should in every reasonable way be promoted.

73. Section 89 accordingly provides that, subject to a certain maximum fixed for the rents of all raiyats and under-raiyats, which will be presently referred to, an ordinary raiyat shall pay such rent as may from time to time be fixed by agreement between him and his landlord; but, in order to check extravagant enhancements by the landlord, it is provided in the following sections that, if the landlord proposes an enhancement of the rent, to which the raiyat does not agree, the landlord shall not eject him without paying him, besides any amount that may be due to him as compensation for improvements under the provisions of the Bill, a further sum, by way of compensation for disturbance, equal to a certain multiple of the yearly increase of

rent demanded. *Ten* times the increase is the amount provided for in the Bill as it stands; but it need hardly be said that a figure of this sort is, at this stage of a Bill, entered only tentatively and subject to future consideration. The object in view, it will be understood, is to fix a multiple of the increase high enough to deter the landlord from making an extravagant demand, but not so high that the raiyat would be induced by the prospect of obtaining it to refuse to accede to a reasonable enhancement.

74. The details of the procedure requisite to give effect to this important provision occupy the greater part of the chapter, but they are not such as to call for notice here. The only other provision of the chapter to which it seems necessary to refer is the rule in section 90 limiting the landlord's right to eject, and which is to the effect that a landlord shall not eject an ordinary raiyat except—

(*a*) for arrears of rent;

(*b*) on the ground that the raiyat has used the land in a manner, which renders it unfit for the purposes of the tenancy, or that he has broken some condition, on breach of which he is, under the terms of a written contract, liable to be ejected; or

(*c*) that he has refused to agree to an enhancement of rent on which the landlord insists.

It is in this last case that the provision as to compensation for disturbance will apply.

CHAPTER IX.—*Provisions regarding Rent applicable to several classes of Tenants.*

75. We now pass from the chapters dealing with particular classes of tenants to those dealing with matters common to several classes. Chapter IX, which is the first of these, contains most of the general provisions of the Bill regarding rent. It begins with a section (96) providing for such additions to, and deductions from, the rents of tenure-holders and occupancy-tenants as are made on account of an alteration in the area of the holding by alluvion or diluvion, by encroachment, eviction by title paramount to that of the landlord, and so forth. This section applies, in the case of a tenure-holder, only in the absence of a contract to the contrary, but, in the case of an occupancy-raiyat, it overrides any such contract.

76. In the case of land being added to the area of a holding, it provides that the amount added to the rent shall be calculated on the rates payable by occupancy-raiyats for land of a similar description, less a deduction, in the case of a tenure-holder, of thirty per cent. for profits, risk and cost of collection. This seems to be the fairest rule to apply in such a case, and it is, moreover, as observed by the Government of Bengal, in harmony with the law regulating additions to the Government revenue in alluvion cases.

77. On the other hand, in the case of a loss of a portion of an area, for the whole of which a single rent has been payable, the only equitable principle to adopt seems to be that the abatement from the rent should bear to the rent previously payable the same proportion as the yearly value of the land lost bears to the yearly value of the holding prior to the loss, and this is what sub-section (3) of section 96 enacts adding, however, that, when the yearly value of the land lost cannot be satisfactorily proved, the abatement shall bear to the previous rent the same proportion as the area lost bears to the area of the holding prior to the loss.

78. Sections 97 to 99 give power to the Board of Revenue to fix the instalments in which rents are to be paid. The power is of little importance in the case of tenures, inasmuch as it can be exercised in respect of them only in the absence of any agreement or custom regulating the matter. In the case of raiyats' holdings, however, it is of considerable importance. Much of the harassment, to which the raiyats are subjected, is said to arise from the number of instalments in which their rents are payable, and, to remedy this, the Board is empowered, subject to certain reservations regarding agreements entered into and customs prevailing before the commencement of the Act, to fix the instalments, in which the rents of raiyats are to be payable, so that there may not be more than four in each year.

79. Section 100 requires every landlord to give to a tenant paying him rent a receipt, containing much fuller details than those prescribed by the existing law, and to keep a counterpart of every receipt so given. It also provides that, when a receipt does not contain the requisite particulars, it shall be deemed to be an acquittance in full up to date.

Section 101 requires every landlord to furnish to his tenant, for each agricultural year, a detailed statement of the account between them for that year, and to keep a counterpart of every statement so furnished.

Section 102, following the existing law regarding receipts, imposes penal damages for refusal or neglect to give receipts or furnish accounts, and further makes it an offence punishable with a fine, not exceeding fifty rupees, to neglect to keep a counterpart as required by the preceding sections.

It is believed that, if these provisions are fully enforced, much advantage will result to both parties. Not only will the tenants be supplied with proper evidence of the payments made by them and of the state of their accounts, but the landlords, if they keep their counterpart statements in a proper manner, will find them useful as evidence before the Courts.

80. Under the existing law, there is but one case in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord, and that the landlord has refused to receive it.

It has been found that this declaration has become a mere form, and it is thought better to allow the tenant to deposit his rent whenever he has reason to believe that the landlord will

not receive it and grant a receipt. It is also thought advisable that a tenant should be allowed to deposit his rent in two other cases, namely :—

(1) when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and

(2) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

81. This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given by section 104 a discretion to refuse the deposit, if he does not think the circumstances of the case warrant its being made, and he is further given by section 106 a discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject, of course, to the right of any person actually entitled to it to recover the amount from the person to whom it is so paid. As regards this last point, however, it will be seen that the officer will have power to retain the deposit if he thinks fit, pending the decision of the Civil Courts as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled.

82. The provisions contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Bihár by the Bihár Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issuec a ommission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the Commissioner is required to submit his appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.

It will be seen that these provisions proceed upon the principle, already referred to in connection with the subject of enhancement, of entrusting to the Revenue authorities the duty of inquiring into, and adjusting, matters, which they are presumably more competent to deal with than the Civil Courts. It is, it will be observed, only the mechanical act of division and the mere framing of the estimate of the crops that, in the cases now in question, are to be entrusted to the Collector and the persons appointed by him, all questions of right being reserved for the Civil Court.

83. Section 117 provides that, if the landlord of any land, of which the rent is payable by division or appraisement of the crop, or any other person, interferes in any way, without the tenant's consent, with the cutting or harvesting of a crop, except by an application to the Collector under the provisions just referred to, he shall be deemed to have committed criminal trespass within the meaning of the Penal Code. This is considered necessary in order to put a stop to the oppressive action of landlords in certain parts of the country, who are found to assume a power to prevent the cutting or harvesting of the crops, and to use it as an engine of extortion against their tenants.

84. Section 118, which applies only to Bihár, provides that all danabandi papers shall, within 15 days after the making of an appraisement, be filed in the Collector's office.

85. Section 119 provides that, nothwithstanding any contract made after the 2nd March, 1883, the date on which it is proposed to introduce the Bill, a raiyat or under-raiyat shall not, in any case, be bound to pay a money-rent exceeding five-sixteenths of the estimated gross produce of his holding. The limit originally proposed was thirty-five per cent. It has now been lowered at the suggestion of the Lieutenant-Governor; but the figures must be regarded as merely provisional and subject to re-consideration.

86. Section 120 in effect enacts that contracts fixing rents shall, in temporarily-settled tracts hold good only until a fresh settlement is made. The reasons for this provision are similar to those stated above (paragraph 21) in connection with section 20.

87. Section 124 makes the rent of a transferable holding the first charge on that holding.

## Chapter X.—*Other provisions applicable to several classes of Tenants.*

88. The question as to the right of a raiyat to make improvements, and to claim compensation therefor on ejectment, will, if the proposal to make occupancy-rights freely saleable in execution of a decree is adopted, be of less importance in Bengal than in some other parts of British India. The great mass of the raiyats having a right of occupancy, and not being liable to be ejected except under peculiar circumstances of rare occurrence, and the question of compensation adjusting itself when an occupancy-right is sold in execution of a decree, claims for compensation for improvements will be comparatively few. But the importance, from an economical point of view, of encouraging improvements is so great in this country, that special

provision has been made for the matter to meet the case of ordinary raiyats, and such cases as may, from time to time, occur of occupancy-raiyats being ejected from their holdings.

The principle on which the sections of the Bill relating to this subject proceed is that that party to a tenancy whose interest in the land preponderates should have the preferential right to improve and take the full benefit of his improvements; but that, if the party having this preferential right is unable or unwilling to avail himself of it, it should be open to the other party to make an improvement and reap the benefit of it.

Section 127 accordingly confers upon an occupancy-raiyat the preferential right to improve, and provides (subject to one exception to be presently noted) that, if he does not avail himself of this right and the landlord desires to have any improvement made, he may call upon the raiyat to make it, and that, if the raiyat does not within a reasonable time comply with the request, the landlord may make the improvement himself. Section 128 enacts what may be termed the inverse of these provisions for the case of the ordinary raiyat, that is to say, it gives the preferential right to the landlord, and allows the raiyat to improve only if the landlord, upon being requested by the raiyat to make an improvement, neglects to do so within a reasonable time.

89. There is, however, as has been intimated, an exception made to these rules in the case of one sort of improvement, namely, a dwelling-house for the raiyat and his family. This, it is considered, is an improvement which every raiyat, an ordinary as well as an occupancy-raiyat, should be entitled to make; and it is further considered that it is not an improvement which a landlord should be empowered to force on a raiyat against his will. As regards this improvement, accordingly, it is provided simply that any raiyat may make it; no right to make it, whether preferential or otherwise, being conferred on the landlord.

90. When a landlord makes an improvement under these sections he will be entitled to reap the full benefit of it in the shape of an enhancement of the rent under the provisions of the Bill relating to that subject. When a raiyat makes an improvement under these sections, he will, if ejected, be entitled, under section 129 of the Bill, subject to certain exceptions which it is unnecessary to notice here, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold, reap the full benefit of his improvements, inasmuch as his rent cannot, under Chapter VI, be enhanced on account of an improvement made by him. An ordinary raiyat under similar circumstances may possibly not be able, in all cases, to retain the full benefit of his improvements, but the check placed on the landlord by the provisions of Chapter VIII will, as a rule, amply protect him in the enjoyment of that benefit.

91. The only other provisions of the Bill, relating to improvements, which seem to call for notice here, are the last clause of section 129, which enacts that improvements made by a raiyat before the commencement of the Act shall be deemed to have been made in accordance with the Act (and therefore to give a claim to compensation), unless it is shown that the landlord forbade the raiyat to make them and was ready to make them himself, and section 132, which makes void all stipulations in contracts providing (*a*) that a landlord may prevent a raiyat from improving or eject him for improving, or (*b*) that a raiyat when ejected shall not be entitled to compensation for improvements.

92. In section 133, providing for the landlord's right to measure lands comprised within an estate or tenure the rents of which are payable to him, the existing law has been modified so as to give a landlord the right to measure all lands lying within the estate or tenure, whether rent-paying or not. As observed by the Government of Bengal, "a landlord has at present no right to measure lákhiráj, and a rent-free-holder may, in virtue of a valid grant of ten bíghás, be holding double as much or more. The mere measuring by the landlord cannot harm him, as he could not be ousted from possession save through the Civil Court. But the landlord seems entitled to make a complete survey of his estate." (*Letter from Government of Bengal, No. 849T., dated 27th July, 1881, page 25.*)

93. The proviso to section 133 enacts that, when land has been measured under that section, it shall not again be measured for ten years without the written permission of the Collector. This seems but reasonable, a right to measure once in ten years being sufficient in all ordinary cases.

94. The only other provisions of this sub-division of the chapter, which deviate in any material respect from the existing law, are those of sections 137 and 138, relating to the standards of measurement. They adhere so closely to the corresponding provisions of the Bill prepared by the Rent Law Commission that the following extract from the Commission's Report (paragraph 140) will best explain them:—

"The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a landlord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the raiyats concerned aver not only that the standard pole of the pargana is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard. In order to remedy these difficulties as far as possible, we have enacted that all measurements made by order of the Civil Court or Collector shall be made according to the Government measure of 14,400 square feet to one standard bíghá. If it be shown that the rights of the parties to the suit are regulated by any different local measure depending upon a pargana standard pole, the Government measure shall be converted into local measure for the purposes of the suit. In case of dispute as to the standard pole, the Collector shall, in any suit before himself, or in any suit before a Civil Court, on a reference made for this purpose by such Court, determine the proper length of such pole. We have followed the present law, as settled by the decisions, in enacting that an appeal shall lie from the Collector's decision to the District Judge, but that, if no such appeal be preferred, the decision of the Collector shall be final."

95. It is stated in Mr. Field's digest, section 12 (4), as the result of decided cases that a raiyat's interest in the land determines when he ceases to cultivate the land and leaves the

neighbourhood without arranging for the payment of the rent. Mr. Field observes that the cases leave the matter thus indefinite, and that, if the proposition is adopted by the legislature, it should be made more precise. Section 140 of the Bill, following this suggestion, provides that, when a tenant of a non-transferable holding leaves the holding uncultivated and the rent of it unpaid for a period of one year, he shall be deemed to have surrendered, except in cases in which, owing to an inundation or any other accident to the land beyond his control, it may have been impossible for him to cultivate.

96. Section 141, relating to the doctrine of merger, follows the corresponding provisions (sections 43 and 44) of the Bill prepared by the Rent Commissioners, who state in their Report that some such enactment is needed to settle the law in Bengal. It provides, subject to certain exceptions and qualifications which it is unnecessary to specify here, that, when, in the case of any tenancy, the interest of the landlord and that of the tenant become by transfer, succession or otherwise united in the same person, so as to be owned by him in the same right, the interest of the tenant shall, during the three months following, be presumed to be merged in that of the landlord, unless the person shows that he has not intended it to be so, and shall, after the expiration of the three months, be conclusively deemed to be so merged, unless, within the three months, the person has executed an instrument declaring his intention that a merger should not take place, and the instrument has been registered and published in a certain prescribed manner.

97. Sections 142 and 148, relating to the appointment of a manager on behalf of co-owners of an estate or tenure, are taken, with slight alterations in the drafting, from the Bill framed by the Rent Law Commission. Their history and the nature of the provisions they contain will be best seen by an extract from the Commission's report. After describing at some length (paragraph 134) the complications, litigation, and even riots which arise when co-owners of an estate or tenure (or, as they are sometimes termed, coparceners) quarrel among themselves and the grievous harassment to which the tenants are exposed in such cases, the report proceeds as follows :—

"135. The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the Revenue authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zila Judges to appoint a person duly qualified and under proper security to manage the estate ; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the Revenue authorities, or of any such person as aforesaid, to remove any manager so appointed (*ib.*, section 27). A subsequent Regulation (V of 1827) enacted that, when the Zila Court thought it just and proper under the provision of that Regulation to provide for administration or management of landed property, it should issue a precept to the Collector, directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

"136. Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor. We have accordingly enacted that, when coparceneers, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely to ensue, (*a*) inconvenience to the public, (*b*) injury to private rights, the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon the coparceners, calling upon them to show cause why they should not appoint a common manager. If the coparceners do not, within a month, show cause why they should not appoint a common manager, the District Judge may direct them to do so. If they fail to obey that direction, the District Judge may either appoint a manager, or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. We have thought it advisable to give the coparceners an opportunity of appointing a manager of their own selecting, before the District Judge proceeds virtually to depose them. When the Court of Wards undertakes the charge, it will govern itself by the provisions of *Court of Wards Act*, IX (B.C.) of 1879. It is discretionary with the Court of Wards to undertake the charge or not. A majority of us have thought it advisable to render this system of management possible, as there may be cases in which no other management will be available. Mr. O'Kinealy doubts if it is advisable to extend the exceptional jurisdiction of the Court of Wards and empower it to manage the estates of persons who happen to disagree amongst themselves. When the District Judge appoints a manager, he is empowered to settle his remuneration, and the manner of it, whether, that is to say, by a fixed salary or a percentage of the collections. He is also empowered to require reasonable security for the proper discharge of the duties of the office. The manager is authorized to exercise the same powers as the coparceners jointly might, but for his appointment, have exercised. He is required to keep regular accounts and to allow the coparceners to inspect and take copies of them. He may be removed upon the application of the Collector, or of any person interested in the estate, tenure or under-tenure. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that they will conduct it without inconvenience to the public or injury to private rights."

98. The only other section in this chapter which calls for notice is section 149, which enacts that no tenant shall be ejected from his holding except in execution of a decree.

## CHAPTER XI.—*Of the Settlement of Rents by a Revenue Officer.*

99. It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a Table of Rates will be impossible. It should be added that, in many instances, the mere framing of a Table of Rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same

manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed.

100. There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a settlement officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words, an important portion of the work, after being done by those authorities, who are most competent to perform it, is liable to be pulled to pieces by another set of authorities who are far less competent to perform it. The enormous amount of unnecessary expense, trouble, and vexation, which this system entails on all concerned can be estimated from the fact stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the settlement officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine, and those which a Civil Court is most competent to determine making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

101. The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

(*a*) when a large proportion of tenants or of the landlords desires that it should be applied, and

(*b*) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlolds and tenants generally.

It is applicable to tenants of any class, but would propably be made use of chiefly for settling the rents of occupancy-tenants.

102. When the rents to be settled are rents which are subject to alterations by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

103. The Revenue-officer, having settled the rents, will prepare a jamabandí, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained, and the amount of the rent fixed or ascertained. This jamabandí will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds, on which the Revenue-officer has proceeded. If ultimately sanctioned by the local Government, it will be again published, and will then continue in force for 10 years.

104. While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants, whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

105. It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as, *e.g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

In most cases, he would probably decide the question on such evidence as might be readily available; but, whenever he takes this course, his decision will be liable to be challenged in a Civil Court under section 160, which provides that nothing contained in it shall prevent the rent fixed being called in question on the ground—

(*a*) that the tenancy does not exist, or that the tenant is not liable to pay rent, or

(*b*) that the tenant belongs to a class different from that to which he is shown in the jamabandí to belong, or

(*c*) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandí, or

(*d*) that a rent different from that shown in the jamabandí has been fixed by contract.

It is believed that the above list exhausts all the matters, in regard to which a Civil Court may be regarded as a better tribunal than the Revenue-authorities, and, if this is so, the determinations of the Revenue-authorities in regard to all other matters may safely be made final and conclusive.

106. It only remains to add that, by section 163, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.

CHAPTER XII.—*Of the Preparation of a Record-of-rights by a Revenue-officer.*

107. The provisions of Chapter XII are somewhat similar to those of Chapter XI, and have been introduced into the Bill with a similar object, but are more limited in their scope, inasmuch as the operations to be undertaken under them do not, like those under Chapter XI, embrace the *fixing* of rents, but are confined to the ascertaining and recording of existing rights and existing rates of rent. Moreover, as existing rights and existing rates of rent are matters the determination of which properly belongs to the Civil Courts, an entry in the record-of-rights prepared by a Revenue-officer under this chapter, is in every case merely to be presumed to be true until the contrary is proved.

108. The only other points calling for notice under this chapter are, first, that the Local Government may apply its provisions not only in the cases in which it is empowered to apply those of Chapter XI, but also in any other case, in which the Governor General in Council may sanction their being applied, and secondly, that the provisions of this chapter being considered a sufficient substitute for those contained in Act VIII (B C.) of 1869, sections 38-40, these latter are not reproduced in the present Bill.

CHAPTER XIII.—*Of the Recovery of Rents from Raiyats and Under-raiyats by distraining the produce of the Holding.*

109. This chapter may be said to be the result of a compromise. The Rent Commission, concuring with the Bihár Rent Committee, proposed to abolish the existing law of distraint as an offset of English law, of which the efficacy was impaired by the legislation of 1859, and which had been abused in Bihár and not always applied in a regular manner in other parts of the country. To this strong objections were urged, and the procedure provided by this chapter was then devised by the Government of Bengal as being likely to secure to the landlord most of the advantages afforded by the existing law, without exposing their tenants to the evils now complained of.

110. The modified power of distraint, which it is now proposed to allow, can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent, which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant, and it may be exercised though the produce has been stored provided it has not passed out of the possession of the cultivator. The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for one month, with a view to the possibility of the owner of the distrained property claiming compensation as for a wrongful distraint, and on the expiration of that period it will be paid to the landlord.

111. Sections 185 and 186 are directed against illegal distraint and interference with crops. Section 185 provides, in effect, that any person who, otherwise than in accordance with the provisions of the Bill, or some other enactment for the time being in force, distrains any produce of a tenant's holding, or interferes with the harvesting of a crop, shall be deemed to have committed criminal trespass within the meaning of the Penal Code; and section 186 imposes a penalty which may extend to three months' imprisonment, or two hundred rupees fine, upon any person who benefits by, or is interested in, the commission of an offence under section 185 if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

112. Section 187 empowers the Local Government to suspend in any local area, for such time as it thinks proper, the sections which entitle a landlord to distrain.

CHAPTER XIV.—*Special rules of procedure applicable to Suits between Landlord and Tenant.*

113. Sections 191 to 198 are intended to embody all those modifications of the ordinary procedure proposed by the Rent Commission and the Government of Bengal, which seem likely to expedite, in any material way, the disposal of suits between landlords and tenants.

Sections 191 to 197 apply to—

(*a*) suits for recovery of rent;
(*b*) suits for penalties claimable under any provision of the Bill; and
(*c*) suits to recover possession of land.

They provide that, in such suits, the summons shall, as a rule, be issued for the final disposal of the case; that the summons may be served by a registered letter; that no written statement shall be filed without the leave of the Court; that the provisions of the Code of Civil Procedure relating to interrogatories, discovery and affidavits shall not apply; that, whether an appeal lies or not, a simple memorandum of the substance of the evidence, such as is prescribed by the Code for unappealable cases, shall suffice; that, as a rule, execution may issue on the oral application of the decree-holder at the time the decree is passed; and that section 305 of the Code, which enables a judgment-debtor to obtain a suspension of an order

made for the sale of his immoveable property, and sections 320 to 325C, which provide for the transfer of decrees to the Collector for execution, shall not apply.

114. A further simplification of the procedure is effected in suits for arrears of rent and for penalties (involving no question of title or of a right to enhance or vary rent) by taking away (section 198) the appeal in such cases from—

(a) a decree or order passed by a District Judge, Additional Judge, or Subordinate Judge, where the amount claimed does not exceed Rs. 100; and

(b) a decree or order passed by any other judicial officer specially empowered by the Local Government, where the amount claimed does not exceed Rs. 50.

In so far as regards the class of cases marked (a), the Bill merely reproduces the existing law, with this difference, that it extends the rule to decrees and orders of Subordinate Judges, who, it is thought, may now safely be entrusted with final jurisdiction in cases of this class.

The extension of the provision to the class of cases marked (b) is based on a proposal of the Rent Law Commissioners supported by the Local Government. The Rent Commissioners would have fixed the limit of value in such cases at Rs. 10, but the Lieutenant-Governor, who must be regarded as the best judge of the qualifications of his officers, has recommended that it should be raised to Rs. 50, the limit fixed by the present Bill.

115. It will be observed that the final jurisdiction in this class of cases will be exercised only by specially selected officers, and that a power of revision is reserved to the District Judge by the proviso to the section.

116. Section 199 is completely new. It is intended for the benefit of a landlord in a suit for an arrear of rent, when, as sometimes happens, the defendant admits that the arrear is due, but pleads that it is due not to the plaintiff but to some rival claimant. In such a case, it seems only reasonable that the tenant should pay the amount of the rent into Court; and the Bill accordingly provides that the Court shall refuse to take cognizance of his plea unless he does so.

117. It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it

A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into Court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant, and to decide against him summarily and provisionally, unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

118. The truth would seem to be that facilities for recovering rents in Bengal should be sought for, not so much in novel forms of procedure as in a reliable record of tenancies and their incidents, and a simple mode of adjusting rents; in other words, by going to the root of the disputes which though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits. If this view is correct, the provisions of the Bill regarding the preparation of Tables of Rates, settlement of rents and framing of records-of-rights, and those regarding receipts and accounts, may reasonably be excepted to remove most of the difficulties of which the landlords now complain.

119. Section 200, following the Bill proposed by the Rent Law Commission, enacts that an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become vested in that assignee.

120. Section 202, relating to relief against forfeitures, is based on section 14 of the Conveyancing and Law of Property Act, 1881. It enacts that a suit for ejectment of a tenant, on the ground of his having forfeited his interest by breach of a condition, or the like, shall not be entertained unless the landlord has given the tenant an opportunity of paying compensation and remedying the breach when it admits of remedy, and that, when a decree is passed in such a suit, it shall not be executed until the defendant is allowed a similar opportunity of repairing or atoning for his wrongful act.

121. The Rent Law Commissioners observe that "there are in the existing law no provisions regarding the away-going crop, and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and

litigation." Sections 203 and 204 of the Bill have been framed to meet such cases. They provide, in effect, that it shall be in the option of the landlord to purchase the crop from the raiyat at a valuation, or to allow him to retain possession of the land at a reasonable rent till he gathers the crop. Similarly, when the raiyat has prepared the land for sowing before the date on which he is ejected, section 203 provides that he shall be entitled to receive from the landlord the estimated value of the labour and capital expended by him in preparing the land together with reasonable interest on the same. These sections are, however, guarded by a proviso that a raiyat shall have no claim under them when, after the commencement of the ejectment-proceedings, he has cultivated or prepared the land contrary to local usage.

122. Sections 205 and 206 require the Court in all suits and proceedings for ejectment to inquire into and adjust all claims between the landlord and the tenant. This provision will, it is believed, be found useful as tending to prevent a multiplicity of suits.

123. The origin and object of section 207, which provides for the institution of suits to determine the status of a tenant or the incidents of a tenancy, will be best explained by an extract from the report of the Rent Commissioners. After referring to the provisions of the existing law regarding suits for pattás and kabúliyats, they thus continue :—

"We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto; the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the raiyat holds twenty bíghás of land, while the raiyat declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the raiyat, afraid of a venal *amín* and a varying pole, desires to avoid. A bribe to the *gamáshta*, or compliance with some petty cess, defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the raiyat from going to his landord's *kachahrí* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or, some fields in the raiyat's holding are by him maintained to be second class rice-land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice-land and should pay a higher rent. At every rent-day the point is discussed; and in a country where any discussion is prone to beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up, which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these, which are constantly arising in this country, more specially in consequence of the absence of boundaries and fences, and the want of an exact survey upon an uniform standard It might have been thought that the landlord in the first case could easily have the questions settled by tendering a pattá and demanding a kabúliyat for twenty bíghás; and the landlord, in the second case, by tendering a pattá and demanding a kabúliyat for the field, as first class rice-land: but if the land turned out to nineteen and a half bíghás instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation.

"Thus these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them, and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. Section 151 of the draft Bill accordingly allows either landlord or tenant to sue for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a pattá or kabúliyat upon the point which the parties themselves wish to have determined."

## CHAPTER XV.—*Sale of transferable Holdings in execution of Decrees for Arrears due on them.*

124. The provisions of this chapter are made applicable to all transferable holdings, including such tenures as are transferable, occupancy-holdings, and bastu holdings under Chapter VII, and involve, in certain other respects, substantive changes in the existing law.

The most important of those changes will be best explained in the words of the Rent Commissioners, with whom it originated.—

"The object," they say, "of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent is, that the superior landlord's security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure; if the tenure, subject to the sub-leases and incumbrances, will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder, it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder: such is the common law of security. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right, or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub leases and incumbrances be avoided, which have rendered the remaining interest of the tenure-holder an insufficient security for the rent payable by him.

"In this view of the matter, we have enacted that a tenure, under-tenure or occupancy-holding, about to be sold in execution of a decree for arrears of its own rent, shall first be put up to auction subject to certain incumbrances, and if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale-day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted upon some conspicuous place upon the land of the tenure. The effect of these provisions will be that persons who hold sub-leases and incumbrances will not be endamaged if the bidding on the first sale-day reaches an amount sufficient to satisfy the decree and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale-day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they can subsequently recover from the defaulter), and so preventing such a sale of the tenure as will avoid incumbrances."

125. Among the objections to the scheme thus propounded by the Commissioners was one to the effect that it was unsuited to the case of occupancy-holdings. This objection is admitt-

ed by Mr. Reynolds and by the Government of Bengal to be as a rule well-founded, inasmuch as an ordinary occupancy-holding is not likely to be saddled with incumbrances which should be respected at a sale. It appears, however, that there are, in some parts of the country, occupancy-holdings of large extent, the land of which is sub-let on such terms that the interest of the lessee is of considerable value. Under these circumstances, the proper course appears to be that proposed by the Government of Bengal, namely, that occupancy-holdings should, as a rule, be sold at once with power to annul all incumbrances, but that the Local Government should have power to direct that the occupancy-holdings in any local area should be in the first instance put up subject to incumbrances as if they were tenures; and it is on these lines that the present Bill is drawn.

126. The general outline of the chapter will be clear from what has been said, but there are certain details of sufficient importance to call for further explanation. In the first place, it should be stated that the word "incumbrance" is used throughout in a special sense. When it is said that a holding will be sold "free of incumbrances," or as the Bill puts it, "with power to avoid incumbrances," it is not meant that it will be discharged free of everything that might in the wide sense of the word be termed an "incumbrance."

The following interests, which might be termed incumbrances, will not be affected by any sale under this chapter:—

(*a*) a tenure existing from the time of the Permanent Settlement;
(*b*) a tenure recognized by the settlement-proceeding of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
(*c*) a tenure of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;
(*d*) a right of occupancy;
(*e*) a right conferred on an occupancy-tenant to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
(*f*) any right or interest which the landlord has expressly and in writing given the tenant permission to create.

The last three of these are protected in similar sales under the existing law, and the first three have been added, because such interests being protected under a sale for arrears of revenue, would seem to be *á fortiori* entitled to protection under a sale for rent.

127. Again, when the Commissioners propose that the holding shall be put up in the first instance subject to incumbrances, they do not mean that it should be sold subject to all incumbrances, but only to such incumbrances as have been created by a registered instrument of which a copy has been served on the landlord. This limitation they considered necessary to prevent sham incumbrances being fraudulently set up after the sale.

128. The Bill has been drawn in accordance with these views, and accordingly, if it becomes law, the result will be—

(*a*) that the interests referred to in paragraph 126 will be protected in the case of all sales;
(*b*) that, in the case of sales subject to incumbrances, the protection will extend also to incumbrances created by registered instruments of which a copy has been served on the landlord;
(*c*) that, except as stated in (*a*) and (*b*), the holding will be sold with power to avoid all liens, sub-tenancies, easements and other rights or interests created upon it by the tenant in limitation of his own interest.

129. An incumbrance will not become void *ipso facto* on a sale under this chapter. It must be annulled by a notice served on the incumbrancer through the Collector within one year after the purchaser first has knowledge of the incumbrance. It may be added that it is proposed, by separate legislation, to apply a similar rule to the case of sales for arrears of revenue.

130. When an order for the sale of a holding is passed under this chapter, nothing will stop the sale, unless the amount due is paid into Court or the decree-holder acknowledges that his claim has been satisfied.

131. When any person, having in a holding advertized for sale under this chapter an interest which would be voidable upon the sale pays into Court the amount requisite to prevent the sale, he will, with a view to the recovery of his money, be placed by section 218 in the position of a mortgagee of the holding with a first charge and a right to possession. If he is an inferior tenant of the holding, he will have a further remedy under section 219 which entitles him to deduct the amount from his rent.

132. The only other provision of the chapter which need be mentioned is section 220, which permits the decree-holder to bid at the sale without the permission of the Court, and precludes the judgment-debtor from bidding.

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## CHAPTER XVI.—*Limitation.*

133. The only provision of this chapter calling for notice is section 225, under which disability will not be recognised as affecting the running of limitation in suits for the recovery of rent. This is in accordance with the recommendation of the Rent Law Commissioners.

"We think," they say, "that a minor ought not to be competent on coming of age to sue a raiyat for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate; and that if the manager of a minor's estate neglects his duty of realizing rents as they fall due, the minor's remedy ought to be in an action for damages against such manager."

C. P. ILBERT.

*The 2nd March 1883.*

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No. 972T—R, dated the 27th September, 1883.

*From*—A. P. MacDonnell, Esq., *Offg. Secy. to the Govt. of Bengal, Reve. Dept.*,

*To*—*The Secy. to the Govt. of India*, Legislative Department.

I am desired by the Lieutenant-Governor to address His Excellency the Governor General in Council on the subject of the Bengal Tenancy Bill, which was forwarded with your letter No. 11C. of the 16th March 1883. The Government of India have already been advised of the publication of translations of the Bill in the *Bengali* (1), *Bihár* (2), and *Uriya Gazettes* (3), on the dates mentioned in the margin, and I am now to say that, with a view to give as wide publicity as possible to the proposed measure, copies of the Bill in English, and in the Bengali, Uriya, and Hindi vernaculars, were made available to all public bodies and private individuals throughout these Provinces. Full publicity has thus been given to the Bill, and the result is apparent in a vast quantity of careful and detailed criticism, which cannot fail to have an effect in moulding the ultimate form of the measure. Copies of the various reports and memorials received by this Government during the last six months in connection with the Bill have been from time to time forwarded to the Government of India; but I am to take this opportunity of submitting in a collected form all the more important correspondence which has passed between this Government and those interested with the subject since Mr. Rivers Thompson assumed his present office in Bengal.

(1) 24th April 1883.
(2) 4th May „
(3) 17th „ „

2. It has been recognized that the Report of the Rent Commission, in itself a most exhaustive State paper, was subjected to a degree of careful criticism, unprecedented in the discussion of public questions even in this country. "No measure of late years," says the representative organ of zamíndárí interests in Bengal, "has attracted so much public attention as this. It has been discussed throughout the country, and representations have poured in upon Government from all quarters. The discussion which has followed the proposed Rent Bill is in marked contrast to what took place when the Rent Bill of 1859 was passed. The only representation of any note which was then submitted to Government came from the British Indian Association; but even that vigilant body did not then show sufficient activity in the matter. It contented itself with submitting a memorial to the Legislative Council. It did not then take any steps, as it has done on the present occasion, to organize public opinion on the subject. But the times have changed. The Government has now become more alive to public opinion than ever. Sir Ashley Eden has invited expressions of public opinion from all quarters. He asked district officers, both executive and judicial, to express their opinion on the Bill He invited the public Associations to discuss the Bill. He appealed to the leading men in the districts to consider the Bill. He offered every facility in the way of discussion. He caused the Bill and the report of the Commission to be translated into Bengali, Urdu and Hindi and had the translations extensively circulated. He went further, and deputed Mr. Reynolds to tap the great centres of mufussal opinion. Thus ample opportunity has been given to the public for a thorough discussion of the Bill."

*Nature of criticism to which the Bill has been subjected.*

3. That is an accurate description of the extent to which the reports under notice had been subjected to criticism up to the early portion of 1881. Later in that year those criticisms were examined in Mr. Mackenzie's letter No. 849T. of the 27th July, a valuable addition being made thereby to the literature of the subject. Afterwards the Government of India, in their Despatch No. 6 of 21st March, 1882, reviewed the entire discussion in its historical and economical aspects with a detail and fullness remarkable, the Lieutenant-Governor may be permitted to say, even in an enquiry which has been distinguished throughout by ability and research. It may be accepted therefore that, even before the publication of the present Bill, the information accumulated on the relations of landlord and tenant in Bengal was almost complete.

4. In a petition dated Calcutta, 1st July 1883, to the House of Commons, the landholders of Bengal and Bihár, while acknowledging that the fullest opportunities had been given for discussing the original draft of the Bill, complain that similar opprtunities of examining the Bill finally submitted to the Government of India by this Government had been refused. This complaint is, in the Lieutenant-Governor's judgment, unreasonable. The Bill submitted by the Bengal Government for the consideration of the Government of India and the Secretary of State embodied the modifications of the Rent Commission's original draft, which, seemed to Sir Ashley Eden to be called for by the ordeal of criticism through which that draft had passed. Those modifications might not have been (as in fact many were not) accepted by the Government of India, and therefore to invite criticism on them before they

*Groundlessness of complaint of secretiveness in regard to the measure made against the Government.*

had been approved by that Government would have been a waste of time. The Bill now before the Council is the Rent Commission's draft moulded into its present shape by the Governments of India and Bengal in the full light of public opinion, and this Bill has now been before the public for six months. Its publication has added to the mass of information extant on the Rent question, a further voluminous expression of opinion on every point of principle and on most matters of detail. The opinions now expressed, indeed, are in many instances but repetitions of what had been said before; but this was to be expected, for the Bill in its main features is the natural outcome of the preceding discussions; while, even on such a wide subject as that in hand, there are limits to human inventiveness. The repetitions, however, are valuable as showing that little more is left to be said upon the subject. A few reports, indeed, are still expected from local bodies or individual officers; but the Lieutenant-Governor thinks it undesirable to postpone any longer the expression of his own views on the main points of the measure. With questions of detail or verbal emendations of the Bill he does not propose at present to trouble the Government of India, as ample opportunity will no doubt be afforded him, during the progress of the Bill through Select Committee, of making such communications on minor points as circumstances may require.

*Necessity for speedy legislation.*

5. If the Lieutenant-Governor thinks it undesirable to consider minute details on this occasion, still less does he wish to follow those advocates of the zamíndárí party, who question the propriety of the measure as a whole. If there really be any persons who, in the face of the overwhelming accumulation of evidence afforded by the discussions of the past ten years, still question the necessity of legislation on the broad lines of this Bill, then it is quite hopeless to expect that anything the Lieutenant-Governor could say would convince them. Recent experience in these Provinces has accentuated the necessity for legislation which has already been recognized most distinctly by the zamíndárs themselves; and Mr. Rivers Thompson therefore hopes that no time may be lost in bringing to a close a controversy the settlement of which is essential to good administration, peace, and progress in Bengal. With these preliminary remarks, I am now to state the views of this Government on the chief provisions of the Bill; and from the statement I shall make it will be seen that, while the Lieutenant-Governor must express dissent from some points of the measure as drafted, he is able to give it, subject to the acceptance of certain modifications, his earnest support.

*Proposal to legislate separately for Bengal and Bihár considered.*

6. In the first place I am to offer a few observations on the propriety of legislating for the whole of these Provinces in one Bill, as the proposal to do so meets with some opposition. It will be within the knowledge of the Government of India that doubts on the point, suggested at an early stage of this discussion, were formulated by Mr. Reynolds in the note which is printed in Appendix IV, Vol. I of the Report submitted by the Bengal Government in 1881; but Sir Ashley Eden, on full consideration of the subject, thought separate Bills unnecessary, believing that "if his proposals for basing the occupancy-right on a broad and popular basis throughout the whole of the Lower Provinces met with approval, and if the improvements suggested by him in the law of distraint were accepted, the matters calling for exceptional treatment in connection with Bihár would be practically reduced to two, *viz.*, the disposal of claims to *zeraat* lands, and the regulation of the procedure for the regulation of rents in kind."

To these remarks of his predecessor, as well as to the arguments advanced by Mr. Reynolds and others in favour of separate legislation for Bengal and for Bihár, the Lieutenant-Governor has given his careful attention; and while he admits that differences do exist between both portions of these Provinces in some respects, he is not prepared to say that they are such as call for divided treatment. It is true that in Bengal the demand for legislation came, in the first instance, from the landlords, who urgently pressed for increased facilities for enhancing and realising rents, while in Bihár the cry was from the raiyats for protection from illegal enhancement and ejectment. It is also true that in Bengal the extent to which subinfeudation has gone produces difficulties in adjusting the mutual relations of proprietor, tenure-holder, and raiyat, while in Bihár those difficulties are less developed. It is further true that in some districts of Bihár the system of corn-rents is far more prevalent than in the districts of Bengal Proper. But granting all this, an examination of these points of apparent difference will show that the differences are of degree rather than of essence; while in Bengal we have well-marked instances of the same evils which depress industry and disturb the public peace in the Patna Division. If ejectment, as a means of extorting enhanced rents, widely prevails in Bihár, evidence is not wanting that a similar practice is in vogue even in the most forward district of Bengal. Does a Bihár zamíndár or thíkadar attach the whole crop of the raiyat to compel payment of an increased *jama* or of legally irrecoverable arrears?—the Bengal zamíndár applies corresponding pressure through suits for monthly kists, or through some other legal device, in order that he may (as one recently ventured to tell a Sub-divisional Officer) "by hook or by crook" raise the rents and break the rates. Where Bihár landlords shift their raiyats from field to field (as they have admitted they do) to prevent the growth of prescriptive rights, the Bengal zamíndár can apply no less potent pressure, if one may judge from the "agreements" which are registered in such widely different districts as the 24-Parganas and Maimansingh. In Bengal and Bihár alike the efforts of landlords are directed towards the same end—enhancement of rent, prevention of the growth of tenant-right, and its destruction where it has grown up; and if in Bengal they are not so successful in their efforts as in Bihár, that is not because of any dissimilarity of aim. The same evil demands the same broad line of treatment in all portions of these Provinces. To prescribe

every variation of detail to suit local circumstances is not within the compass of any law, these variations must be worked out in practice by the applications of the broad principles of the law to individual cases by the Courts or other authorities entrusted with the administration of the Act.

*Necessity for a positive definition of 'tenure' and raiyat.*

7. *Chapter I.*—The negative character of the definitions of "tenure" and "raiyat" has been unfavourably criticised. The difficulties in the way of a positive definition, especially those to which the Rent Commission draw attention in paragraph 20 of their Report, are not ignored, but it is clear that the want of some definition which might afford a presumption as to the nature of the right leads in practice to serious embarrassment from which all landlords suffer. The Board of Revenue even go the length of asserting that any "rule of thumb" procedure which would enable a tenure to be distinguished even presumptively from an occupancy-holding would be a great relief to landlords, and a help to the revenue administration of the Province.

*Objects at which a definition of those terms should aim.*

On such a question as a legal definition of this sort, the Lieutenant-Governor has much diffidence in offering any opinion; but it seems to him that there is reason for the dissatisfaction expressed with this portion of the Bill, and that a definition is more likely to avoid difficulties than the absence of any definition at all. One of the greatest difficulties to be met with in dealing with the rent question in Bengal is the question of sub-letting. It is possible that by accurately defining the class who, as occupancy-raiyats, will be entitled to sublet, that difficulty may be lessened; and, therefore, the Lieutenant-Governor would suggest that while those who retain a substantial cultivating interest in the holding should be regarded as occupancy-raiyats, all those owners of occupancy-rights who never got possession for the *bonâ fide* purposes of cultivation, or who, having originally been cultivators, have divorced themselves from direct connection with, or responsibility for, the cultivation of the holding, should be classed as tenure-holders. It is to be remembered that the late Supreme and present High Court have declared "any tenure by title-deeds or by the custom of the country, transferable by sale," to be an under-tenure (Indian Law Reports, Vol. 8, page 675), while the Lieutenant-Governor understands that the Courts look on persons who have not got possession for *bonâ fide* purposes of cultivation in the light of tenure-holders (9, Calcutta Law Reports, page 449). It seems therefore to Mr. Rivers Thompson that a definition on the lines he proposes would not only be in accordance with the prevailing judicial opinions on the subject, but would also establish an intelligible demarcation line between the cultivator and the mere rent-receiver, which would hold good in the great majority of, if not in all, cases. Such a definition would also have the great advantage of classing as tenure-holders mahájans and other non-agricultural purchasers of occupancy-rights, whose raiyats would then become 'ordinary' raiyats, saved by the provisions of the Bill applicable to their class from the worst evils of rack-renting, and capable of acquiring occupancy-rights in course of time.

*Objections to such a definition.*

In making this suggestion, the Lieutenant-Governor is not unmindful of the objection that it would tend to increase indefinitely the chain of middlemen between the proprietor and the actual cultivator. The increase, however, would be but nominal; for the non-cultivating occupancy-raiyat is already in fact a middleman, while middlemen, divorced from all connection with tillage, are rarely, in these Provinces, owing to the pressure of population on the soil, recruited from the cultivating classes. Besides, even if middlemen are created, the condition of the actual cultivator under them would be better (if the proposals which the Lieutenant-Governor will subsequently make, be accepted), than under rack-renting occupancy-raiyats, who are middlemen in all but the name. Mr. Rivers Thompson is also not forgetful of the probability that such a definition as he proposes would meet with some opposition in portions of deltaic Bengal; for instance, where certain classes claim the *status* and immunities of tenure-holders, while exercising over under-tenants the power and privileges at present enjoyed by occupancy-raiyats. These classes would oppose a formal definition which would curtail the power they claim to exercise; and it is only right to say that their opposition seemed so formidable to Sir Richard Temple that, notwithstanding the existence of judicial decisions declaring these classes to be tenure-holders, he deemed it imprudent to provoke it by affording any protection, even in settlement proceedings, to the actual cultivators of the soil. On the other hand, the proposed definition would meet with approval, and would redress existing inconveniences in those districts where cultivation expands or contracts with the rise or fall of prices, an elastic rent system being the consequence.

*A positive definition of 'tenure' and 'raiyat' proposed.*

Such being the objects to be provided for, the question is, what form should the definitions take? This question is, no doubt, difficult, the difficulty being in connection with the point whether an occupancy-raiyat may sublet his holding and still remain a raiyat. In by far the greater portion of these Provinces it is, in the Lieutenant-Governor's opinion, safe to provide that a raiyat who sublets a large portion of, if not his entire holding, thus divorcing himself from actual cultivation, shall be deemed to be, not a raiyat, but a tenure-holder. In the less settled portions of the deltaic and frontier districts however, sub-letting is the usual procedure for reclaiming land, and is rather a method of *raiyatti* cultivation than an evidence of subinfeudation. In such districts therefore, subletting of the entire holding should not operate to convert the lessor into a tenure-holder, but should be deemed consistent with the *status* of a raiyat. Bearing these considerations in view, the Lieutenant-Governor submits for the con-

sideration of the Council the following definitions which are based on those contained in the Rent Commission's Report :—

(*a.*)—A tenure means (1) a rent-paying interest in land subordinate to the interest of a proprietor and superior to that of a raiyat ; (2) a rent-free interest in land when a rent-paying interest in the same land exists between the proprietary interest and such rent-free interest ; (3) a revenue-free or rent-free interest in land when no rent-paying interest exists between such revenue-free and rent-free interest and the proprietary interest. A tenure includes an under-tenure.

*Illustrations.*—A patní, darpatní, or sepatní interest is a tenure. An ijára or darijára is a tenure. An occupancy holding, which the owner does not cultivate as a raiyat, is a tenure. A valid bramhottar is a tenure. A lákhiráj holding, included in a revenue-paying estate, and not entered in the Register of Revenue-free lands, is a tenure.

(*b.*)—A raiyat or tenant means a person who cultivates land, or who occupies land for the purposes of cultivating it, or bringing it under cultivation. A person cultivates land or brings it under cultivation within the meaning of this definition, when cultivation is carried on by himself, or by the members of his family, or by his servants, or by hired labour, or by sub-letting a part while continuing to carry on cultivation by one or more of the preceding means in a moiety of the land.

Provided that by order duly published in the *Calcutta Gazette*, the Local Government may declare that cultivation as a raiyat may be carried on within a tract to be specified in such notification by sub-letting the whole of the land, and may suspend or withdraw that order, and such declaration shall have the force of law.

*Illustration.*—Cultivation of the whole or part of an occupancy-holding on the terms of a division of produce between the occupancy-holder and the actual cultivator, is cultivation under a sub-lease.

(The latter illustration is meant to provide for those cases which, judging from experience, would probably be numerous, in which mahájans having brought up occupancy-rights would let a portion of the land on a *nukdi*, and the remainder really on a *baoli* tenure, but ostensibly on a contract fixing portion of the produce as the wages of labour.)

I am to propose below that landlords be allowed a more summary procedure for collecting rents from tenure-holders than from raiyats, while non-occupancy raiyats renting land from tenure-holders be granted a more beneficial *status* than *kurfas* or under-tenants can enjoy. It is to be hoped that by these means the interests of the landlords on the one hand, and those of the actual cultivators on the other, will jointly operate in the direction of classifying as tenure-holders all owners of occupancy-rights who do not actually cultivate the soil ; and further that the limitations imposed on the powers of tenure-holders to rack-rent, to which reference will be made later on, will discourage the growth of the class.

*Distinction between* raiyatti *and* khámár *land.*

*Chapter II.*—The provisions relating to the distinction between *khámár* and *raiyatti* lands have been subjected to a good deal of criticism, the outcome of which is to confirm the Lieutenant-Governor's belief in the usefulness of those provisions, especially in Bihár. It may be conceded that the chapter is not so much required in Bengal as in Bihár, and that there is truth in what some critics of the measure say, that, if in Bihár landlords strive to absorb *raiyatti* lands into *khámár*, in Bengal raiyatts strive to convert *khámár* into *raiyatti*. In either case, however, it would seem that some provisions, such as the Bill contains, are necessary ; although the Lieutenant-Governor is not prepared to say that, if enacted, they will be found as necessary, or made as much use of, in Bengal Proper as in Bihár. The requirements of particular districts will, however, be sufficiently met by the discretion with which section 7 of the Bill vests the Local Government. Undoubtedly the chapter may be needed from time to time in particular tracts in Bengal, where it would prove an useful adjunct to some other provisions of the Bill ; but it would probably be unnecessary to enforce it on any large scale in Bengal Proper, if landlords do not abuse their power of pre-emption by converting *raiyatti* into *khámár* land. This point will be dealt with later on.

*Proposal to recognize an increase in khámár land examined.*

Some critics of the Bill, while admitting the necessity for the chapter especially as regards Bihár, desire to modify it so far as not to absolutely limit for ever the stock of *khámár* land. Some would allow it to be increased by the absorption of *raiyatti* land ; others by the reclamation of waste lands and by alluvial accretions ; and a few, referring to local peculiarities of tenure, would class as *khámár* such lands as the *utbundi* lands of Nuddea. On the general principle whether *raiyatti* land should be absorbed into *khámár*, the Lieutenant-Governor entertains a decided opinion in the negative. Without wishing to reduce the existing stock of the landlord's *khámár* or *zeraat* land, (in which it should be distinctly understood that the lands for instance, known as indigo *zeraats*, which are essentially *raiyatti* are not included), Mr. Rivers Thompson believes that every consideration of law, of experience, and of expediency, is against its extension. It has been affirmed that *khámár* was originally the waste unreclamed area of the village which the zamíndár was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with the Government of the day, but which as cultivators settled on it, became part of the *rayatti* land of the village. However this may be, the fact is indisputable that under the Permanent Settlement Regulation (VIII of 1793, sections 37 to 39) no land was recognized as *khámár* which was not such on the 12th August 1765, the date of the grant of the Díwání, and there is no law recognizing the creation of *khámár* land subsequent to that date. These facts afford a sufficient answer to the charge of an infringement of ancient rights which is brought against the present proposals

* Reports from Her Majesty's Consuls, Parts I—V, 1869-70. *See* also Mr. Justice Field's "Landholding, &c, in various countries."

to define the limits of *khámár* land; and it may be added that from the facts established in other countries, of the clear line of distinction between demesne and tenemental lands, analogies* might be drawn in favour of those provisions of the Bill.

If, however, it be inexpedient to permit the increase of the *khámár* area by the absorption of *raiyatti* land, can the same be said of an increase through reclamation of waste lands, alluvial accretions, or lands subject to special conditions of cultivation? In the Lieutenant-Governor's opinion, the prohibition should hold good here too. In those districts where large waste areas still exist, and where there is no customary right of pasturage or easement involved, the faculty of converting waste into *khámár* might perhaps be conceded without any immediate loss to the community at large; though, looking to the ever-growing importance of emigration from the more crowded tracts to those wastes, there would be ultimate loss and difficulty. In those districts, however, where the village wastes are the only pasture-grounds, the case assumes a different aspect, for admittedly one of the most crying wants in these Provinces is the provision of sufficient pasturage for cattle. While our Forest Department is unsuccessfully struggling with the difficulty of providing fuel and pasturage reserves that manure now used as fuel may be liberated for agricultural uses, and cattle preserved for husbandry, it would surely be unwise to hasten the absorption into the cultivated area of such limited pasturages as still remain by any such incentives as the proposals in question are calculated to afford.

It is stated by some that local custom usually classes *churs* as *khámár*, and that such a custom ought to be recognised; but the Lieutenant-Governor must say that he does not see on what basis of right such a custom, which is opposed to positive law, could be defended. The principle guaranteed by section 4, Regulation XI of 1825, that a raiyat or "any description of under-tenant whatever" has a right to an accretion to his holding, would, if properly pleaded, dispose, in the Lieutenant-Governor's opinion, of many such "customs" in a Court of Justice. It is well known that *churs* and alluvial accretion form large tracts of country, especially in the deltaic districts. Many of these *churs* are inhabited by an industrious class of resident raiyats; and any custom, even if legal, which would deprive them of agrarian rights, would be indefensible on grounds of public policy or justice to individuals, and a fertile source of embarassment to Government.

Finally, in regard to *utbundi* lands, the Lieutenant-Governor does not see that any exception to the general rule is needed. As far as he is aware, the *utbundi* tenure is only special as regards the system on which the rent is paid, and does not affect the legal attributes of the land. It is not so much that one raiyat cultivates one *utbundi* holding one year, and a different raiyat another year, as that rent is paid only on the extent of land actually cultivated for the year, and by measurement at harvest time according, to the actul outturn of the crop. The Lieutenant-Governor understands that prescriptive rights of occupancy under Act VIII of 1869 are now actually acquired in these *utbundi* lands, and he would not by any provision impede the growth of such rights.

*Objection to classing raiyats holding at fixed rates as necessarily tenure-holders. Registration of tenures.*

9. In regard to *Chapter III*, the Lieutenant-Governor is disposed to agree with those who object to classing tenants at fixed rates as necessarily tenure-holders. He would prefer to apply to them the definition already given, classing them as tenure-holders or raiyats as they fall within the definition of either. Mr. Rivers Thompson also agrees with the representative Associations in thinking it undesirable to retain section 28 of the Bill. Tenure-holders are, as a rule, well able to look after their own interests, and they have, in section 32 of the Bill, a means provided of compelling registration should they prefer not to await the landlord's action under section 33. It is unlikely that a tenure-holder desiring to register a transfer would be deterred from applying to the landlords under section 27 by any of the causes which may deter a raiyat from tendering a payment of rent. The introduction of the revenue-officer therefore in these proceedings is unnecessary; and as the double procedure would be embarrassing, the section may well be omitted, and the same facilities to compel registration afforded to both the tenure-holder and his landlord. Parties should go to the Court where they will get final relief, unless there be a distinct advantage to be gained by a departure from this rule. The omission of section 28 from the Bill would involve modification in section 35. The words from "and determine" to "under section 27" might be omitted, and "Local Government" substituted for "Board of Revenue" in the first line

*Incorporation in the Bill of the procedure for sale of patní taluqs.*

10. *Chapter IV.*—The Lieutenant-Governor approves of the principle of including the law for the sale of patní taluqs in the Bill, as it is essentially a part of the law of landlord and tenant in these Provinces, and as its provisions may be advantageously extended to some other classes of tenures besides those distinctively known as *patnis*. He sees no force in the objections made to this course; for there is no question of altering the substantive provisions of Regulation VIII of 1819, or of modifying it in any points of principle, or except on a few, and those unimportant, points of detail. If, however, the Regulation be now included in the Bill, it is for consideration whether the whole law should not be worked into the body of the Bill, instead of being relegated in part to a schedule. This would bring into one Code the whole law upon the point relating to landlords and tenants.

*Right of occupancy. Definition of a 'settled raiyat.'*

11. *Chapter V.*—This chapter brings into prominence one of the chief features of the Bill, and has naturally received much attention. The advocates of the zamíndárí interests object to any expansion of the provisions of Act X of 1859 but, putting extreme

partizans on one side, the Lieutenant-Governor does not see that any reasonable objection is made to conferring on raiyats, who have resided twelve years in the village, rights of occupancy in all lands they hold, or may hold, in that village. Considerable opposition, however, is shown to the introduction of the term "estate" into the definition, and various examples are given of the hardships which would be thereby inflicted on zamíndárs or tenure-holders. The basis of all the hostile criticisms on the chapter is that the "settled" raiyat is not the true representative of the *khúdkhást* raiyat, and that, as the object of this legislation is supposed to be the rehabilitation of the *khúdkhást* raiyat, we go beyond the requirements of the case by introducing the "estate" into the definition, and excluding the idea of *residence* as essential to the *status* of the raiyat in question. That is, in the Lieutenant-Governor's opinion a correct representation of the main objections to the definition, though in his own view it is untenable, having regard to what passed in 1859. It must be added, however, that, in a petition to the House of Commons, the Bihár Landholders' Association go the length of asserting that the *khúdkhást* raiyat was altogether unknown to Bihár at the time of the Permanent Settlement, which they say only recognized, on the one hand, proprietors of the soil, and, on the other, tenants-at-will with no rights or privileges of any description. This extraordinary assertion of the extreme zamíndárí view of the Permanent Settlement has for its sole foundation the facts that the rule regarding the cancellation of *khúdkhást* raiyat's pattás contained in the second clause of section 60, Regulation VIII of 1793, did not apply to Bihár, and that the Court of Directors in 1819 expressed an opinion that zamíndárs were entitled to eject *hereditary* raiyats on refusal to pay even exorbitant rents.

*Erroneous views regarding the status of Bihár raiyats contained in the Bihár Landholders' Association's petitions to Parliament.*

It would be tedious to enter here on an examination of the Permanent Settlement with a view to correct the serious misapprehensions of its nature and effect into which the Bihár Landholders' Association have fallen. Such an examination will be found on pages 97 to 108 of the Papers on the Working and Amendment of Act X of 1859, which have recently been republished by the Government of India; and here it will be sufficient to say that the position of Bihár zamíndárs at the time of the Permanent Settlement, so far from being the independent one now claimed by the Bihár Landholders' Association, was such as to justify Mr. Shore in speaking of "the very degarded state of the proprietors in Bíhár compared with those in Bengal. The former, unnoticed by Government and left at the merey of the *Amils*, have in fact considered themselves proprietors only of tithe of their real estates, and assured of this when dispossessed, they have been less anxious to retain a management which exposed them to the chance of losing a part of what they received without it." And, again, "the system of management adopted in Bíhár for so many years having been calculated to destroy all ideas of right in the proprietors of the soil, beyond their admitted claims to a tithe of their proprietary right, they consider all besides this at the discretion of the Government." (Minute of September 18, 1789). The true reason why section 60, clause 2, Regulation VIII of 1793, did not apply to Bihár was that written pattás had obtained a currency in Bengal which was unknown in Bihár, where the *baoli* rent system and verbal agreements had prevailed up to the latter part of the last century; that accordingly provisions for dealing with collusive pattás, which were of use in Bengal would have been out of place in Bihár, and that the same stringent rules required to protect raiyats against the powerful landholders of Bengal, were uncalled for in the case of the powerless zamíndárs of Bihár. "In Bihár," says Mr. Shore, "the variations in the demands upon the raiyats are not so great as in Bengal; the system of dividing the produce (*i. e.*, the *baoli* system) affords a definite rule whenever that prevails; and the regulations need not be so minute as those proposed for Bengal." (See paragraph 145 of the Minute already quoted: also Harington's Analysis, Vol. III, p. 441.) If the Bihár Landholders' Association had consulted the official literature on the subject, they would have been saved from the error of thinking that Bihár raiyats were held to have no rights by the framers of the Permanent Settlement. The whole of that literature proves beyond doubt that the ancient usages of the people were, at the time of the Permanent Settlement, less obscured in Bihár than in Bengal; that the true position of zamíndárs as removable revenue collectors was less open to dispute; that the cultivator's right to hold his land as long as he paid the authorized rent was less questioned; and that even the *pattkhást* raiyat was less known, the village margin of waste land being greater in Bihár than in Bengal.

If the Bihár Landholders Association's appeal to section 60, Regulation VIII of 1793, be unfortunate, their reference to the Court of Director's despatch of 1819 is not less so. So far from stating that in 1793 zamíndárs had unlimited powers of ejectment and enhancement over all classes of raiyats, as the Association assert, that despatch is concerned with proving exactly the reverse, as is shown by the following passage from the 13th paragraph opening the discussion of "the rights of the Peasantry":—"Although the zamíndárs with whom the Permanent Settlement was made are, in the Regulations respecting that arrangement, declared to be 'actual proprietors of the soil,' although their zamíndárís are called landed estates, and all other holders of land denominated their under-tenants, and although, as we shall have occasion more particularly to observe in the course of this despatch the use of those terms, which has ever since continued current, has in practice contributed with other causes to perplex the subject of landed tenures, and thereby to impair, and thereby to destroy, the right of individuals, yet it is clear that the rights which were actually conferred on the zamíndárs, or which were actually recognized to exist in that class by the enactments of the Permanent Settlement, were not intended to trench upon *the rights which were possessed by the raiyat* (the italics are the Lieutenant-Governor's). The whole tenor of the

despatch goes to shew that undoubtedly the peasantry in 1793 had rights which neither the Government of the day did, nor could, alienate from them; and the passage which the Association quote, apart from its context, merely states as an "unavoidable inference" that zamíndárs" are authorized by the existing law (*i.e.*, by the law as understood in 1819) to oust hereditary raiyats." Keeping in view the unforeseen effect on tenant-right of the legislation subsequent to 1793, particularly of Regulation V of 1794, and VII of 1799 it will be seen that the Court of Directors in the passage quoted by the Association were in fact not referring to the Permanent Settlement at all, or to raiyats' rights under it. And of this (if further demonstration on the point is to be given) the Bihár Landholders' Association might have satisfied themselves by going a little beyond the quotation they make from the conclusion of the 53rd paragraph of the despatch, to the commencement of the 54th. The 54th paragraph of the despatch of 15th January, 1819 runs thus :—"In the consideration of this subject it is impossible for us not to remark that consequences the most injurious to the rights and interests of individuals have arisen from describing those with whom the Permanent Settlement was concluded as actual proprietors of the land. This mistake, for such it is now admitted to have been, and the habit which has grown out of it in considering the payment of the raiyats as rent, instead of revenue, have produced all the evils that might be expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zamíndárs, in acting towards persons of the other classes as if they, the zamíndárs, really were, in the ordinary sense of the words, the proprietors of the land and as if the raiyats had no permanent interests but what they derive from them * * * * * *

It is fortunate, however, and must not be forgotten that in the same Regulation in which the Bengal Government in 1793 conferred rights upon the zamíndárs, apparently inconsistent with the rights of the cultivators of the soil, it reserved to itself the full power of passing such laws, as from time to time might appear necessary for the protection of the rights acknowledged to be vested in the raiyats."

It did not of course require this demonstration to satisfy the Government of India that the views expressed by the Bihár Landholders' Association, on the status of zamíndár and raiyat in Bihár in 1793, are incorrect: but the Lieutenant-Governor has thought it right that the expression of such erroneous views, by an influential body of landowners in a petition to Parliament, should not be allowed to pass uncontradicted.

*The definition of a 'settled' raiyat as contained in the Bill further Justified.*

Returning to the objections which have been raised to the definition of a "settled raiyat" the Lieutenant-Governor starts with the fullest acceptance of the principle enunciated by the Famine Commission, that it is "desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security." This principle finds a fitting recognition in the constitutional acknowledgment made by the Bill that the proprietor's interest in the soil is not an absolute or exclusive one; but that, as Lord Hasting's Government admitted in their letter of the 7th October, 1815, to the Court of Directors, the permanent cultivator has an "established hereditary right in the land he cultivates so long as he continues to pay the rent justly demandable from him with punctuality." This position has the Lieutenant-Governor's fullest approval as being in accordance with the ancient custom of the country, and never superseded by any act of active legislation. The customary law of these Provinces being such, the question remains whether the village in which the cultivator lives should limit and bound his rights, or whether, having once been admitted by the landlord to permanent cultivation in one part of his estate, he should not be deemed entitled to similar privileges in other portions which lie outside the village in which he may actually reside. To the question thus raised, the Lieutenant-Governor would give an affirmative answer. The interests of the community require as large an extension of fixity of tenure as is consistent with the rights of the zamíndárs, and the only rights which can be conceded to zamíndárs upon the point are those of receiving fair rents, and of assuring themselves that the persons they admit to permanent residence and cultivation within their estates are persons of good character and likely to make solvent, industrious tenants. Once assured on these points, the proprietor of an estate can have no reasonable justification for refusing to an approved tenant cultivating rights in one portion of his zamíndárí which he has granted to him in another. It must be remembered that the proposal under consideration has been brought forward in consequence of the evils caused by the action of the zamíndárs themselves in shifting their raiyats from land to land to prevent the accrual of the right which the earliest regulations recognized, and Act X of 1859 distinctly affirmed.

On this question the Lieutenant-Governor would say that perhaps too much importance has been attached to the fact that the term *khúdkásht* connoted, or is believed to have connoted the idea of residence in the village in which the raiyat's holding lay. The early discussions upon Act X of 1859 show that residence, though generally, was not always a condition of occupancy; and at any rate it should be borne in mind that we are not now seeking to rehabilitate the *khúdkásht* raiyat in exactly the same status which obtained in 1793. The reasons for this are obvious. The period between 1793 and 1859 was one in which the power of the landlord had grown beyond controllable limits, and exercised an almost paramount influence dangerous to public stability and order. It was in such a state of things that the law of 1859 was passed; and as regards the position of the main body of the cultivating classes, the doubts and difficulties of the situation (which had arisen from the effacement of the raiyats' rights and privileges by unchecked zamíndárí influence and independence) were solved by the declaration

of a 12 years' occupancy as evidence of prescriptive title, that term being adopted in the Act absolutely and *without reference to residence.*

Even if Act X of 1859 had not thus introduced a "new departure" in the land law of Bengal, the changes of a century, and the indeterminate limits of villages at the time of the Permanent Settlement, forbid that we should go back now to the consideration of a state of things which existed nearly a century ago. It is, in fact, impossible to do so, for the circumstances and conditions of the country are different; and all we can hope to do is to place the settled raiyat of to-day in a position analogous to that occupied by his prototype. One of the privileges of the *khúdkásht* raiyat was to hold fresh land in the same village on the same tenure as the old; and in those times, there was a large margin of waste in all villages, the resident cultivator had the fresh land at his door. There is now but little margin of waste in any village of the settled districts, and therefore the raiyat, if he wants to add to his holding, cannot always succeed in doing so. That he should, however, if successful in his quest (and he can only succeed with the consent of his landlord), hold such additional land in the same estate, by the same title as his original holding, is only a rational development of an old customary law of the country to suit modern wants.

*Definition of a settled raiyat further considered.*

In considering all that has been urged against the definition which the Bill gives of a settled raiyat, Mr. Rivers Thompson regrets to find but little evidence of a conciliatory spirit on the part of zamíndárs. They represent, in all their statements upon the question at issue, that they, of all people, are the most anxious to retain good raiyats upon their properties; but when an attempt is made to translate their expressions of good-will towards their tenantry into positive law, in accordance with the necessities of the case as demonstrated by accumulated proof, the landlords assert their right not to be bound by any law. This question of the definition of a settled raiyat is a case in point. It is impossible to believe that in early times, as population grew and the margin of waste land in a village diminished, a landlord's approved tenants would not have the preference of such fresh lands as existed in neighbouring villages of the estate, or that they would hold such lands on a less secure title than attached to their lands in the parent village. It must also to be remembered that, owing to the disintegrating influence of time and of the law of inheritance, the village area of to-day is frequently much smaller than the village area of a century ago; and to restrict the rights of the settled raiyat to the smaller area would not be just to him nor advantageous to the public, nor in accordance with the practice which has grown up under Act X of 1859. All experience shows that the settled raiyat of a village, who rarely holds more than a few acres of land, and who is therefore too poor to afford two homesteads, or any care taker but himself and children, can never go far from his home for fresh land. This can be asserted with positive certainty of all those raiyats who pay less than Rs. 20 annual rent, and they number 8,925,000 out of the 9,752,000 raiyats, who, according to the Famine Commissioners, cultivate the soil of Bengal. It may be asserted, if not as positively, still with much probability, of 682,000 raiyats who pay rents from Rs. 20 to Rs. 50. The residuum of raiyats who may thus hold land in two villages is small; and it is not to the public benefit to discourage this substantial class of raiyat; while even if a raiyat of that class went 20 miles away from his village for fresh land, as some zamíndárs fear, he will still be well-known to his landlord, who, after all, may refuse him the land. The Lieutenant-Governor must, then, support the definition of a settled raiyat given by the Bill.

*Objections to throwing on resident raiyats onus of proving the 'settled' status.*

While, however, the Lieutenant-Governor thus agrees with one part of the definition of a settled raiyat, he desires to represent an objection to section 45 as it stands, in that it throws on the raiyat the burden of proving 12 years' occupation. This provision will in most cases cause delay and inconvenience, and in some cases must result in injustice. It is here a misfortune that Bengal is so absolutely destitute of a record-of-rights. If we had such a record the position would be without difficulties, but in its absence there is much reason to fear continuous litigation to establish or disprove claims to a right of occupancy. When under the provisions of this Bill a record-of-rights is established, disputes will be impossible. But in the long interval before that can be accomplished, we must seek by some addition to the section to meet the difficulty, and the only way which presents itself to the Lieutenant-Governor's mind is the adoption of the principle that the fact of residence or actual occupation, which can be readily ascertained, should afford a rebutable presumption that the raiyat is entitled to be classed as a settled raiyat. If the presumption be unfounded, the zamíndár can readily rebut it, for all the materials of proof are in his office or *sherista.* No one can doubt that in the vast majority of cases the presumption will not be rebutable, and that the zamíndárs will not question it; and thus an enquiry into exceptional cases will alone be needed to secure to the country at large the peace and contentment which must attend on the well-defined *status* of the bulk of the agricultural population. On the other hand, an enquiry into the *status* of all resident cultivators will last a generation, and will lead to unrest, if not litigation, which should be avoided.

*Necessity for barring freedom of contract.*

Finally, the Lieutenant-Governor has no doubt whatever as to the necessity of that provision which disables the raiyat from contracting himself out of the law. On this point there is a general agreement of opinion that in view of the power of the zamíndár and the ignorance and weakness of the raiyat, such contract should be disallowed. It must not be forgotten that the provisions on this subject contained in the Bill are in harmony with the principles of the Permanent Settlement Regulations (VIII, 1793), which, in sections 57 and 58,

subjected to the Collector's supervision and approval not only the *forms* of leases, but also the rates of rent recoverable under them.

*Objection of acquisition of occupancy right by grant.*

12. With regard to section 48, the Government of India will perceive from the local reports that some officers oppose the retention of the section in the Bill, because, for instance, it might be made the means of depreciating the value of an estate sold for arrears of revenue. To this view by itself, the Lieutenant-Governor does not attach much importance, because the establishment of a substantial peasant proprietary should enhance, and not depreciate, the value of an estate. There are risks, however, connected with the concession of such a power, inasmuch as it might be used as a means of bargaining by zamíndárs with parties whom they wished to favor on receipt of valuable consideration, and of defeating accrual of the right of occupancy of the rightful cultivator who may have been in possession for 10 or 11 years. Mr. Rivers Thompson agrees with the Hon'ble Mr. Reylolds in thinking that the occupancy right, being inherent in the *status* of the raiyat, is not the landlord's to grant; and further, that no necessity has been made out for introducing into the Bill a principle which is foreign to the law of Bengal.

*Acquisition of occupancy right in khámár land.*

13. The objections to section 49 are numerous, and the Lieutenant-Governor is disposed on the whole to admit their validity, the more so as he is in favour of preventing the absorption, of *raiyatté* into *khámár* land. In the course of time, when *khámár* lands have been surveyed and registered, there will be no difficulty in maintaining the distinction between the two classes of land; and in the Lieutenant-Governor's view, it would be advantageous to encourage the retention in the possession of zamíndárs of such demesne lands as they now hold. Under the existing law as interpreted by the Courts, the Lieutenant-Governor understands that, if not barred by the landlord, rights of occupancy may be acquired in *khán.ár*; and he would not interfere with this state of things. With this view Mr. Rivers Thompson would suggest the addition of the words "or from year to year" after the words "fixed period" in the sixth line.

*Incidents of occupancy rights generally.*

14. Coming now to section 50, I am to say that, while no serious objections have been made to clauses *a*, *b*, *c*, *d*, and *g*, there is great and radical divergence of opinion in regard to clauses *e* and *f*. One party predicts the worst evils from the recognition of free sale and the liberty to sublet; the other says that freedom of sale is necessary to the raiyat's properity, while freedom to sublet cannot be prevented. No attempt is made to reconcile conflicting interests; and even the British Indian Association, the leading exponent of zamíndári views, forget the admission deliberately made in their letter of 20th November, 1878, that with proper safeguards they had "no objection to the proposal that the transferability of the occupancy tenure, restricted to the cultivating class, should be recognised by law."

*Transferability of occupancy right by sale.*

There can be no doubt that the questions of free sale and sub-letting are intricate and difficult, and that the welfare of the raiyats in these Provinces is greatly dependent on a true solution of them. The key, however, to such solution is, in the Lieutenant-Governor's opinion, given by the Famine Commission when they say: "Though, on the whole, we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost unavoidable, the immediate course to be followed by the Government must, no doubt, be to a great extent governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." The question, then, which the Lieutenant-Governor has to answer is this: Has the custom of the free sale of occupancy-rights attained such a growth and stability throughout these Provinces that it may now be safely recognized by law?

Having given the matter his most careful attention, the Lieutenant-Governor believes that the weight of argument and fact is in favour of legislation in the direction indicated by the Bill; and he accordingly would recognize the transferability of the raiyat's occupancy-right throughout these Provinces. It may be accepted that freedom of transfer was not an incident of the *khúdkásht* raiyat's holding; and the Lieutenant-Governor is not unmindful of the fact that in Jhánsí, in the Dekkhan, to some extent in the Sontal Parganas, and possibly in other parts of India, free sale has had evil results on a thriftless peasantry. If he had to deal with the question as one of mere theory, Mr. Rivers Thompson would probably not remain uninfluenced by its historical aspect, and by the dangers of vesting a population with transferable rights of property before habits of thrift among them had been fully confirmed. But the Lieutenant-Governor has here to deal with a question, not of theory, but of actual practice. It is here not a matter of "introducing a source of temporary prosperity," and encouraging an "increase of thriftlessness on the one hand, and of greed on the other," as was the case in the Dekkhan, but of confirming and recognizing a growing custom, to which the needs of the country have spontaneously given birth, and which has so far produced no evil results.

*Statistics of sales of occupancy right.*

It is true, indeed, that the Bihár Landholders' Association, in the petition to Parliament which has been already noticed, assert that "in Bihár there is no such custom (as sale of occupancy rights), nor is it even pretended that there is such a custom." That assertion, however, is certainly incorrect. It may, indeed, be said that if one point had been during these discussions more strongly insisted upon than another by Bihár officers, it was this—that the

transferability of occupancy rights was a growing custom in Bihár, of which every man in the province, who knew anything of agrarian matters, was well aware. On page 370, Vol. II of the Rent Commission's Report, statistics are given showing that 410 occupancy-rights, *exclusive* of 445 *guzasta* tenures, were sold in Bihár Courts, *in execution of decrees*, during the single year 1878-79. That fact alone, which should have been within the knowledge of the Association, sufficiently refutes the assertion made in the petition to Parliament; but in order still further to demonstrate its inaccuracy, as well as to furnish the basis for future argument in the course of this letter, the Lieutenant-Governor will quote the following statistics of private sales of occupancy rights from the Appendix to the published Report on the Registration Department in Bengal for 1881-82, which is the latest authoritative information available on the subject:—

*Statement showing the number and value of raiyatí holdings transferred by registered deeds of sale in each Registration District of the Lower Provinces of the Bengal Presidency for the year 1881-82.*

| DISTRICTS. | RAIYATÍ HOLDINGS AT FIXED RATES. | | | | | | | | | RYOTTÍ HOLDINGS WITH RIGHT OF OCCUPANCY. | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of transactions. | Purchasers: Mahájans, traders, or money-lenders. | Purchasers: Zamíndárs: Landlord of the holding transferred. | Purchasers: Zamíndárs: Zamíndár or landlord of holding other than that transferred. | Purchasers: Raiyats. | Purchasers: Others, including unspecified. | Annual rent payable to landlord. | Purchase-money. | Number of years' purchase. | Number of transactions. | Purchasers: Mahájans, traders, or money-lenders. | Purchasers: Zamíndárs: Landlord of the holding transferred. | Purchasers: Zamíndárs: Zamíndár or landlord of holding other than that transferred. | Purchasers: Raiyats. | Purchasers: Others, including unspecified. | Annual rent payable to landlord. | Purchase-money. | Number of years' purchase. |
| 1 | 1a | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 1a | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| *Bengal.* | | | | | | | Rs. A. P. | Rs. | | | | | | | | Rs. A. P. | | |
| Burdwan | 1,107 | 182 | 35 | 67 | 350 | 439 | 10,188 5 0 | 1,06,833 | 10·4 | 2,361 | 329 | 32 | 43 | 1,432 | 542 | 17,250 1 0 | 1,66,422 | 9·6 |
| Bankúra | 1,348 | 417 | 17 | 53 | 606 | 287 | 10,755 9 4 | 1,27,316 | 11·8 | 807 | 240 | 7 | 25 | 453 | 162 | 6,384 13 6 | 53,999 | 8·4 |
| Birbhúm | 390 | 28 | 5 | 14 | 260 | 80 | 2,400 0 0 | 30,703 | 12·7 | 1,067 | 141 | 18 | 54 | 1,340 | 154 | 13,581 0 0 | 95,055 | 6·9 |
| Midnapur | 1,207 | 550 | 13 | 36 | 467 | 262 | 8,658 10 1 | 94,806 | 10·9 | 4,514 | 1,692 | 72 | 51 | 1,901 | 698 | 22,937 6 10 | 2,66,328 | 11·7 |
| Hughlí | 445 | 85 | 12 | 13 | 178 | 165 | 4,070 3 0 | 31,017 | 7·6 | 1,289 | 306 | 17 | 52 | 475 | 514 | 49,420 0 4 | 1,23,010 | 6·3 |
| Howrah | 850 | 238 | 10 | 49 | 142 | 411 | 10,810 0 0 | 3,03,813 | 28·5 | 330 | 68 | 3 | 12 | 146 | 105 | 5,217 0 0 | 28,256 | 5·4 |
| 24-Parganas | 1,657 | 230 | 29 | 106 | 804 | 1,004 | 37,151 10 10 | 2,44,938 | 6·5 | 797 | 93 | 28 | 40 | 421 | 321 | 14,866 10 9 | 2,23,613 | 15 |
| Nadíya | 894 | 236 | 19 | 63 | 335 | 243 | 14,700 7 8 | 84,460 | 5·7 | 553 | 170 | 16 | 17 | 198 | 152 | 7,672 0 6 | 40,204 | 5·2 |
| Jessore | 1,823 | 102 | 28 | 56 | 1,233 | 450 | 25,248 0 0 | 1,27,445 | 5 | 1,319 | 121 | 19 | 39 | 808 | 375 | 15,645 0 0 | 69,259 | 4·4 |
| Múrshidábad | 753 | 92 | 35 | 51 | 368 | 243 | 5,055 6 8 | 51,236 | 10·1 | 907 | 119 | 23 | 31 | 482 | 256 | 6,245 13 1 | 51,225 | 8·2 |
| Dinájpur | 258 | 11 | 1 | 2 | 227 | 17 | 2,129 6 0 | 28,405 | 13·3 | 1,202 | 57 | 4 | 14 | 978 | 149 | 10,560 0 0 | 1,25,410 | 11·8 |
| Rajshahí | 69 | 16 | 2 | 7 | 22 | 24 | 979 7 1 | 11,063 | 11·3 | 147 | 32 | 3 | 4 | 59 | 49 | 2,115 8 0 | 10,579 | 5 |
| Rangpur | 330 | 17 | 96 | 9 | 199 | 11 | 3,721 13 7 | 34,179 | 9·1 | 2,285 | 77 | 66 | 123 | 2,027 | 54 | 25,433 9 9 | 1,75,825 | 6·9 |
| Bogra | 9 | 2 | ... | 2 | 5 | . | 223 0 0 | 3,067 | 13·7 | 316 | 17 | ... | 84 | 193 | 22 | 2,596 0 0 | 17,526 | 6·7 |
| Pabná | 207 | 50 | 1 | 27 | 79 | 54 | 1,771 0 0 | 18,259 | 10·3 | 364 | 47 | 7 | 47 | 214 | 60 | 2,132 0 0 | 21,311 | 9·9 |
| Darjíling | ... | ... | ... | ... | .. | ... | ... | ... | ... | ... | ... | ... | ... | .. | ... | . | .. | ... |
| Jálpáiguri | 5 | ... | ... | 2 | 3 | ... | 167 0 0 | 125 | ·7 | 4 | ... | ... | 1 | 2 | 1 | 22 7 0 | 448 | 20·3 |
| Dháka | 130 | 23 | 2 | 29 | 48 | 38 | 640 6 10 | 22,472 | 35·1 | 1,242 | 79 | 27 | 61 | 951 | 166 | 4,408 4 7 | 70,429 | 15·9 |
| Faridpur | 197 | 8 | 8 | 35 | 125 | 55 | 1,614 0 0 | 12,028 | 7·4 | 900 | 30 | 11 | 90 | 706 | 242 | 4,924 0 0 | 41,093 | 8·3 |
| Bakerganj | 1,904 | 161 | 11 | 190 | 1,060 | 696 | 38,523 4 10 | 1,36,159 | 3·5 | 121 | 11 | 10 | 35 | 53 | 41 | 1,658 0 9 | 8,361 | 5 |
| Maimansingh | 157 | 20 | [illegible] | 42 | 75 | 37 | 792 4 10 | 18,834 | 23·7 | 649 | 55 | 25 | 77 | 721 | 136 | 4,008 11 9 | 56,588 | 14·1 |
| Tipperah | 149 | 27 | 7 | 20 | 138 | 31 | 1,515 2 0 | 11,622 | 7·6 | 3,046 | 82 | 7 | 46 | 2,302 | 716 | 14,329 15 0 | 1,31,817 | 9·1 |
| Chittagong | 614 | 40 | 16 | 43 | 112 | 417 | 2,985 1 1 | 34,968 | 11·7 | 108 | 5 | ... | 8 | 18 | 90 | 864 12 0 | 9,372 | 10·8 |
| Noakholly | 948 | 73 | 24 | 485 | 164 | 505 | 9,710 0 0 | 63,082 | 6·4 | 460 | 34 | 31 | 153 | 316 | 65 | 5,425 9 0 | 22,931 | 4·2 |
| *Bihár.* | | | | | | | | | | | | | | | | | | |
| Patna | 89 | 3 | 8 | 42 | 36 | 2 | 1,369 4 3 | 16,835 | 12·2 | 82 | 1 | 11 | 19 | 41 | 12 | 795 4 7 | 14,264 | 17·9 |
| Gayá | 10 | 4 | 6 | 2 | 7 | 2 | 176 1 6 | 2,687 | 15·2 | 79 | 6 | 13 | 8 | 42 | 10 | 109 2 0 | 5,787 | 53 |
| Shahábád | 639 | 41 | 60 | 90 | 509 | 38 | 7,061 6 2 | 3,06,398 | 43·6 | 10 | 6 | ... | 3 | 3 | ... | 257 15 6 | 3,479 | 9·6 |
| Muzafferpur | 23 | 1 | 25 | 2 | 6 | 1 | 175 12 3 | 3,741 | 21·3 | 491 | 81 | 32 | 137 | 217 | 25 | 3,916 8 8 | 69,635 | 17·7 |
| Durbhunga | 97 | 4 | 3 | 28 | 49 | 15 | 823 12 9 | 8,706 | 10·5 | 99 | 16 | 21 | 21 | 33 | 5 | 678 8 3 | 7,085 | 10·4 |
| Sarun | 162 | 12 | 2 | 17 | 119 | 17 | 980 7 0 | 16,620 | 16·9 | 59 | 4 | ... | 11 | 46 | 14 | 499 5 6 | 8,608 | 17·4 |
| Champaran | 42 | 17 | ... | 4 | 21 | ... | 199 2 1 | 3,602 | 18·1 | 61 | 13 | 2 | 2 | 39 | 5 | 138 2 9 | 5,128 | 37·1 |
| Monghyr | 242 | 49 | 31 | 41 | 107 | 26 | 3,783 10 10 | 37,681 | 9·9 | 197 | 46 | 4 | 47 | 92 | 20 | 2,275 9 2 | 20,591 | 9 |
| Bhagalpur | 133 | 25 | 16 | 3 | 57 | 32 | 1,525 9 0 | 10,527 | 6·9 | 197 | 36 | 7 | 5 | 127 | 22 | 1,985 1 7 | 15,313 | 7·7 |
| Purniyá | 3 | 2 | ... | 1 | ... | ... | 185 2 0 | 394 | 2·1 | 889 | 138 | 4 | 16 | 733 | 55 | 7,628 14 4 | 69,327 | 9 |
| Maldah | 66 | 32 | ... | 2 | 7 | 23 | 1,695 7 4 | 8,877 | 5·2 | 1,288 | 72 | 1 | 2 | 1,204 | 8 | 2,359 3 4 | 85,104 | 36 |
| Sontal Parganas. | 371 | 103 | 12 | 6 | 254 | ... | 2,732 0 0 | 24,166 | 8·8 | 2,982 | 966 | 16 | 35 | 1,837 | 131 | 21,516 0 0 | 1,56,359 | 7·2 |
| *Orissa.* | | | | | | | | | | | | | | | | | | |
| Cuttack | 97 | 18 | 6 | 14 | 19 | 39 | 456 3 7 | 9,029 | 19·8 | 7 | 1 | 1 | 1 | 1 | 3 | 9 14 1 | 233 | 23·3 |
| Puri | 232 | 27 | ... | 61 | 97 | 55 | 768 15 10 | 14,801 | 19·2 | 467 | 108 | ... | 49 | 248 | 100 | 1,440 0 1 | 37,922 | 26·3 |
| Balasore | 53 | 17 | ... | 4 | 19 | 15 | 229 9 8 | 2,733 | 11·9 | 26 | 5 | 1 | 3 | 16 | 4 | 47 7 0 | 747 | 15·8 |
| *Chutiá Nagpur.* | | | | | | | | | | | | | | | | | | |
| Házaríbagh | 7 | 5 | ... | ... | 2 | ... | 1,300 11 6 | 3,024 | 3 | 11 | 9 | | ... | 5 | 1 | 350 10 9 | 2,489 | 7·1 |
| Lohardága | 9 | 3 | 2 | ... | 5 | 1 | 158 4 0 | 1,800 | 11·3 | 21 | 10 | 2 | 2 | 7 | 1 | 54 12 0 | 3,718 | 67·9 |
| Singbhum | ... | ... | ... | ... | ... | ... | ... | ... | . | 3 | ... | ... | 1 | ... | 2 | 14 10 0 | 144 | 10·2 |
| Manbhum | 98 | 14 | ... | 2 | 66 | 17 | 508 0 0 | 11,657 | 22·9 | 210 | 9 | 7 | 2 | 164 | 41 | 1,525 2 0 | 13,089 | 8·5 |
| GRAND TOTAL | 17,833 | 2,987 | 550 | 1,710 | 8,389 | 5,740 | 2,17,739 10 7 | 20,82,000 | 9·5 | 32,633 | 5,351 | 558 | 1,472 | 21,203 | 5,529 | 2,53,269 12 5 | 23,30,168 | 9·2 |

These statistics prove that not only in every district of Bihár, but in every district of these Provinces (except Dárjíling, where altogether exceptional conditions prevail) occupancy-rights are now more or less freely sold as a matter of private agreement without objection on the landlord's part, and we know from independent evidence that many of the districts in which the custom seems most firmly established are those in which raiyats are best off. It is true that about 16 per cent. of the purchasers of occupancy-rights are mahájans; and this is

a fact which has created misgivings as to the ultimate effect of formally recognizing the transferable character of occupancy rights. This is a danger, however, for which it is believed some provision has been made in the earlier portions of this letter, and with which I am to deal at greater length further on. Here I am to observe that it is now quite too late for landlords to object to a custom which already seems, without any opposition on their part, to have taken root in the agrarian economy of the Province.

Although, however, landlords may be out of Court in their objections to the recognition of the freedom of sale of occupancy-rights, this question remains—Is it desirable to give to the custom generally the formal sanction of the law, and if not generally, then to what extent? The Lieutenant-Governor has no doubt whatever that the law may recognize free sale throughout Bengal, and if he had doubts on the question as it affects Bihár, those doubts would have been removed by the unanimity of impartial local opinion in favour of the proposal, and by the evidence afforded not only by the Registration statistics referred to above, but by the following figured statement of the extent to which occupancy-rights in Bihár were sold during the last three years in execution of decrees in the various Civil Courts :—

*Sales of occupancy holdings in the districts of the Patna Division, in execution of decrees, during the years 1881, 1882, and 1883.*

| District. | 1880. | | 1881. | | 1882. | |
|---|---|---|---|---|---|---|
| | Number of holdings. | Selling price. | Number of holdings. | Selling price. | Number of holdings. | Selling price. |
| | | Rs. | | Rs. | | Rs. |
| Patna | 72 | 9,627 | 71 | 7,667 | 97 | 14,456 |
| Gayá | 92 | 8,076 | 32 | 1,209 | 57 | 4,875 |
| Shahábád | 696* | 11,988 | 924* | 23,933 | 1,174* | 10,722 |
| Sarun | 247 | 3,610 | 291 | 3,150 | 460 | 13,565 |
| Champaran | 132 | 2,416 | 145 | 2,310 | 141 | 2,559 |
| Durbhunga, Muzafferpur | 843 | 13,463 | 1,628 | 15,286 | 1,693 | 22,406 |
| Total | 2,082 | 49,180 | 3,091 | 53,550 | 3,622 | 68,583 |

* *Including Guzastus.*

It may be added that in the Monghyr and Bhagulpur districts, which, though not portion of the Patna Division, are usually considered portion of Bihár, 91, 184 and 102 occupancy holdings were sold in each of the above years respectively.

It will thus be manifest that occupancy-rights are now saleable in every district of Bihár both as a matter of private agreement, and compulsorily in satisfaction of debts; but even had this not been so, it would have been difficult to justify, on one of the main principles of the Bill, any distinctive practice in two parts of the same Province. On a review of the whole question, then, the Lieutenant-Governor cannot but conclude that the balance of argument is in favour of extending to Bihár the recognition of the right, which the circumstances of Bengal Proper not only justify, but demand. As observed by the British Indian Association in 1878, the recognition of the right of transfer would create a direct interest in the improvement of the soil, would stimulate cultivation, would tend to establish a substantial peasant proprietary, would give a valid security for the realization of the landlord's rent, and, by increasing the marketable value of the land, would lower the rate of interest when the raiyat has to borrow. These are all advantages which cannot be lightly foregone; and Mr. Rivers Thompson therefore does not contest the wisdom of this portion of the Bill, the more so as its operation would be made the subject of watchful supervision.

*Registration of sales of occupancy rights in zamíndár's* sherista.

While, however, the Lieutenant-Governor thinks that the right of free sale of occupancy-rights may now be conceded as beneficial to all parties, and indeed, not to be repressed, he is of the opinion that the wishes of zamíndárs may be so far consulted as that the notices of sale prescribed by section 51 should be presented, and successions under sections 54 and 55 of the Bill registered in their offices, and a ready means of information thereby afforded them of electing or not to exercise their right of pre-emption without the intervention of the Collector in the first instance. Section 46 of the Rent Commission's Bill provided for such registration, and section 47 provided for the levy by the zamíndár of a reasonable fee. Both these provisions commend themselves to the Lieutenant-Governor, and he would suggest that they be incorporated in the Bill before the Council. He believes it is only fair to allow zamíndárs to levy such a fee as will cover the costs of maintaining a registering establishment, while in matters of this kind it is of infinite advantage to encourage, as far as possible, arrangements out of Court. They avoid the intervention of the ministerial officers in negotiations, thus reducing expenditure; preclude an irritating cause of harassing delays; and tend to promote more friendly relations between landlords and their tenants. It is not forgotten that doubts are expressed in paragraph 26 of the Statement of Objects and Reasons as to the possibility of bringing home to the raiyat class generally the details of such a system; but there are reasons for believing that the class is conversant with this system already, and that its

enforcement will be in accordance with custom. To provide for cases in which the raiyat might not wish to approach the zamíndár, or in which he might wish to secure proof of service of the notice, provision might be made for effecting service through the Sub-Registrar, either by the post or otherwise. The Lieutenant-Governor would prefer that such service should be effected through the Registration Department rather than through the Collector or Civil Courts, because that Department affords cheaper facilities to the people; and, as in the majority of cases it may be expected there will be no dispute and no wish on the landlord's side to exercise his right of pre-emption, it seems as well that the office which will register the completed transaction should also deal with its initial stages. There is as has been already suggested a strong, and the Lieutenant-Governor must say reasonable, objection to unnecessary interference on the part of revenue or judicial officers in private transactions; but this objection does not hold in the case of the Registration Department, which, in all negotiations of the sort, is altogether passive. Of course the Collector will be kept informed by the Registrar of all that passes in his various rural or urban offices in connection with these provisions of the law.

*Objections to allowing zamíndár a veto of sale of occupancy-right.*

But while advocating registration of sales in the zamíndár's *sherista*, the Lieutenant-Governor does not desire to give the zamíndár a *veto* upon the transaction. It has been suggested by the Commissioner of Dháká, concurring in the opinion of the Collector of Maimansing, that "the landlord ought not to be bound to register any one as his raiyat who is not a *bonâ fide* cultivator;" and this proposal is in accordance with the recommendation made by the British Indian Association in their letter of 20th November, 1878, to which allusion has already been made. The Lieutenant-Governor would be very glad indeed if he could see his way to adopting that suggestion, but it seems to him impracticable. The object, of course, is to prevent occupancy-rights passing into the hands of mahájans; but the village mahájan is very often to some extent a *bonâ fide* cultivator of the soil, whom, on the testimony of the British Indian Association itself, it is not always desirable to exclude; while it may be fairly presumed that most landlords would waive their power of *veto* if it were made worth their while to do so. Hence a system of fines on transfers would grow up, which would have the two-fold effect of reconciling landlords to dealings with all sorts of mahájans who could best pay them, and of depreciating the value of the occupancy title to the raiyat, to whose shoulders the purchasing mahájan would in time transfer the full weight of the fine. For these reasons, then, the Lieutenant-Governor must dissent from the view that a veto on sales should be allowed to proprietors, finding no justification for it in actual experience, believing that in the pre-emption sections of the Bill the zamíndárs have a safeguard against the evils they fear from the exercise of the right of free sale, and being convinced that a concession on this point to the wishes of the zamíndárs would entirely neutralize the principle of free sale.

*Necessity for registration of tenures in Bengal.*

Although the Lieutenant-Governor is thus desirous of affording zamíndárs all reasonable facilities of keeping themselves acquainted with changes in their estates without undue official interference, he is not satisfied that the registration provisions of the Bill are all that is called for by the circumstances of these Provinces. If those provisions prove effectual for the purposes of the landlords, they will go no way towards supplying the Executive with what it ought to possess—adequate information regarding the division and sub-infeudation of property, and the transfers it undergoes. In Act VII (B.C.) of 1876 we have such a source of information in regard to the interests of proprietors, managers and mortgagees, and it remains to complete the chain by the addition of links which will supply similar knowledge regarding all sorts of tenures. In a later portion of this letter the Lieutenant-Governor will propose that the patní sale procedure, or some reasonable modification of it, be applied to the recovery of arrears of rent due by tenure-holders; but to render that proposal workable it is essential that tenures of all sorts should be registered. Thus, not only for the purposes of this Bill, but for wider administrative reasons, Mr. Rivers Thompson thinks that the time has come when the registration, which has been effected of proprietors' titles, should be brought lower down. This will be best done by following, with due modifications, the procedure of Act VII (B.C.) of 1876, which was worked so successfully in regard to proprietary titles; and therefore, when sufficient progress has been made with this Bill in Committee to indicate the direction in which legislation for the registration of tenures should proceed, the Lieutenant-Governor will be prepared to introduce into the Bengal Legislative Council a Bill for the purpose. For the registration of occupancy holdings, Mr. Rivers Thompson looks forward to the creation of a competent village agency, the result of a revision of the Patwárí Regulations, and of a survey and record-of-rights which will relieve zamíndárs of the duty of registration and transfer it to responsible public officers.

Before passing on from this subject of registration and pre-emption, the Lieutenant-Governor desires to draw attention to the ambiguity which arises from the employment of the term "landlord" in those sections of the Bill. It is not, of course, the intention to give to the holder of a temporary interest, such as an ijárdár, the power of pre-emption: that privilege is reserved as the Lieutenant-Governor understands, to the proprietor or permanent tenure-holder. But the definition of landlord in section 3 (*q*) of the Bill, and the employment of the term in sections 51, 54, and 55, is not calculated to promote that intention. Wherever the word "landlord" is used in these pre-emption clauses, the Lieutenant-Governor would suggest the substitution of "proprietor or permanent tenure-holder."

*Sub-letting by occupancy-raiyats.*

15. Having thus expressed his opinion in favour of the unrestricted freedom of sale of occupancy-rights in Bengal and Bihár, the Lieutenant-Governor proceeds to consider the question of sub-letting, and

in regard to it he at once admits that sub-letting by occupancy-raiyats is calculated to cause difficulty and inconvenience. Mr. Rivers Thompson has, however, sought in vain through these papers for any criticisms on this question which are not merely destructive, or for any practical suggestions by which sub-letting may be prevented or the difficulties which it occasions obviated. From the discussions which have passed, however, one fact, which is besides, in accordance with the Lieutenant-Governor's previous ideas, comes out in strong relief, namely, that sub-letting cannot be prevented either in Bengal or in Bihár. We may declare it illegal and refuse it recognition in our Courts, but we only thereby increase the evils of a system which, if it did not subserve some useful purpose, would not possess the vitality which it exhibits.

Sub-letting by occupancy-raiyats is undoubtedly an established custom which has its uses, and which cannot be stopped. The question then arises—What are its abuses, and how can they be removed? The abuses of the system are summed up in paragraph 41 of the Statement of Objects and Reasons: "The power of transferring and sub-letting which the Bill recognizes may, in course of time, lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy-raiyats, but under-raiyats with but little protection from the law." If these fears are ever to be realized, it will not, in the Lieutenant-Governor's opinion, be from the recognition of the custom of sub-letting, which is nothing new, but from the accumulation of occupancy-rights in the hands of rack-renting non-agriculturists through the operation of free sale. The prevention of evil from sub-letting therefore depends on the probability that mahájans and non-agriculturists will not invest their money in buying occupancy-rights, or, if they do, on our success in limiting their power of rack-renting under-tenants.

*Prevention of rack-renting by mahájans who purchase occupancy-rights.*

Now, from the statistics exhibited in paragraph 14 above, there is reason to anticipate that mahájans will invest their money in the purchase of occupancy-rights; and the question how to prevent the evils contemplated as possible under such circumstances in the Statement of Objects and Reasons, demands consideration. In the Lieutenant-Governor's opinion an effective way to prevent these evils is by converting all purchasers of occupancy-rights, who are not *bonâ fide* cultivators, into tenure-holders, under whom the actual cultivator will have the protection afforded by the *status* of a raiyat; and this was one of the reasons which induced Mr. Rivers Thompson to propose the definitions of "tenure" and "raiyat" given in paragraph 6 above. The other check upon the purchase of occupancy-rights by mahájans follows from the proposals which I am to submit under the next chapter, regarding the rack-rent limits to be imposed on raiyats' rents, and the checks on exorbitant enhancements.

*Objection to the provisions of the Bill attaching the occupancy-right to a holding bought in by the landlord*

16. The last section in this Chapter which seems to call for notice is section 56. This section has met with much opposition from zamíndárs, and has also been condemned by other competent critics of the Bill. After carefully considering the question, the Lieutenant-Governor must say that the section as drafted seems to him to be too drastic. Had the occupancy-right been made adherent to the soil only of such holdings as the landlord had acquired otherwise than by purchase, the section would not be so objectionable as many people now think it; but even then, it would, in Mr. Rivers Thompson's opinion, be based on an unconstitutional principle. The constitutional principle is that *raiyatí* land connot, under any circumstances, be converted into *khámár*, and that when *raiyatí* land comes into the landlord's possession, he should be under an obligation to let it out at the current rates of rent. The Lieutenant-Governor desires to preserve this principle in its integrity and to enforce it; and he therefore must express his dissent from the opinion (which is, however, more suggested than definitely stated in paragraph 42 of the Statement of Objects and Reasons), that a landlord may, for an indefinite period, keep such *raiyatí* lands in his own hands and cultivate them through his servants or by means of hired labour. He holds to the view that a landlord should be bound to let out such land to raiyats for cultivation. It might be that even as the Bill stands the zamíndár would in course of time be able to recoup himself for the expenditure incurred in the exercise of his right of pre-emption by imposing a fine upon the in-coming tenant; and the matter would thus right itself. Still the Lieutenant-Governor agrees in thinking that the attachment of the right of occupancy to the soil, as in section 56 of the Bill, is founded on a wrong principle. The occupancy-right is the attribute of the settled raiyat, and it should not in this case be made adherent to the soil. Neither is it really necessary for the purpose in hand that it should be so, for, if the *raiyatí* land acquired by the zamíndár be let to a settled raiyat of the village or estate, that raiyat will hold it on an occupancy title at a fair rent. If it be not let to a settled raiyat, but to a non-occupancy raiyat, but few years should elapse before an occupancy title will accrue to him, if he be well-behaved and industrious. The Lieutenant-Governor would, therefore, modify section 56, and while insisting on the landlords letting out to raiyats all *raiyatí* lands of which they may become possessed by purchase or lapse of any sort, he would allow the other provisions of the Bill free play, believing that they will operate in the direction contemplated by section 56. This suggestion, however, pre-supposes, as an essential condition, that the proposal I am to make in paragraph 20 below, regarding the equalization of the *maxima* rents demandable from occupancy and non-occupancy raiyats, be adopted. If a difference in the rack-rent limits for occupancy and non-occupancy rents be recognized, and the practically wide field for enhancing the latter, now allowed by section 119, be preserved in the Bill, then the Lieutenant-Governor will feel constrained to support a modification of section 56, only on the basis of compensation for disturbance on the principle stated in paragraph 24 below. When the law recognizes no difference

between the limits up to which occupancy and non-occupancy rates can be enhanced, zamíndárs can have no great motive in opposing the accrual of occupancy-rights; but when such a difference exists, as section 119 of this Bill contemplates, or the absence of any rack-rent limit would import, then there is a most powerful incentive supplied to zamíndárs to defeat the growth of fixity of tenure. Looking to the past history of this question, no one can doubt that zamíndárs would act upon that incentive. It would be always in the power of a zamíndár to eject the raiyat in, say, the 11th year of his tenancy; or, if he admitted him to occupancy-rights, to insist on a rent which would render the position valueless. It is to be remembered that a non-occupancy raiyat, on acquiring occupancy-rights, is, under section 79, not competent to sue for an abatement of his rent.

*Penalty on refusal to let raiyatti land.*

Finally, it would be necessary to adopt some stronger precautions than the wording of the section presents against recusance on the part of zamíndárs to let out *raiyatti* land of which they may become possessed; and from this point of view it might be unobjectionably enacted by way of penalty that if such land were not let to tenants under the Bill within a year from its coming into the zamíndár's possession, any raiyat should be authorized to demand that it be let to him. When let under these circumstances, the mere possession should invest the tenant with an occupancy-right. As it stands, the section is incomplete.

*Terms of holding to remain unaltered till changed in due course.*

17. *Chapter VI.*—The Indigo Planters' Association strongly object to section 58 as drafted. They say that under the section as it stands it would be open to a raiyat to repudiate every condition under which he held his lands at a low money-rate of rent, while continuing to sit at the low rate alone. An instance from actual practice is given of an agreement made with a raiyat by which, in consideration of his devoting a certain moderate quantity of land to growing indigo, the rent of his holding was greatly reduced; and it is contended that as the section stands it would be competent to the raiyat to repudiate the agreement while holding at the reduced rent. Similar objections have been made from other quarters, and the Lieutenant-Governor thinks that they are reasonable. He therefore would suggest an amendment to the effect that not only the money-rent, but the conditions of the holding should remain unaltered till varied in due course.

*Official supervision of enhancement of rent by private agreement.*

18. Section 59, clause (2), has met with much opposition as being in the nature of "officious legislation;" but in the Lieutenant-Governor's opinion the section is based on a right principle, and is likely to prove advantageous in practice. According to the old customary law of Bengal, it was the function of the ruling power to determine what rent the raiyat was to pay; and when sanctioning the Permanent Settlement, the Court of Directors expressly reserved "the right which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to prevent the raiyats from being improperly disturbed in their possessions, or loaded with unwarrantable exactions."* The Lieutenant-Governor does not deny that the Settlement Regulation empowered zamíndárs to make agreements with their raiyats, but it cannot be denied that all such agreements were both as to form and substance subjected by the same Regulation to official control. This control, partially relaxed by legislation, has been, in the course of time, completely ignored, until in parts of the country the raiyat's capacity to pay has become the limit of the landlord's exaction. The provision under notice seeks only to re-establish a limit, so that the raiyats may not be "loaded with unwarrantable exactions," and it is therefore in harmony with the letter and spirit of the Permanent Settlement. Another objection to this provision is that the limit being less than that up to which enhancement might be had in suit, the tendency will be to drive people into Court rather than abide by the section. It is obvious, however, that the limit affords ample scope for fair contracts in the great majority of conceivable cases. An enhancement of six annas in the rupee of rent is rarely possible now in any of the settled districts except in the case of alluvial lands or revision of temporary settlements concluded long ago. Zamíndárs are only interested in the former, and for them further provisions will be suggested in paragraph 21 below.

* Despatch from Court of Directors, dated 19th September, 1792.

*Tables of Rates.*

19. The subject of the preparation of Tables of Rates is one to which the Government of India, on first considering this measure, attached great importance. The Lieutenant-Governor regrets, however, that he does not see much prospect of any practical results of great value coming from this part of the Bill. The general opinion is that the proposals, though good in theory, are unworkable, and that no such uniformity in rates exists anywhere in Bengal as would be needed for the basis of such a table. This view borrows considerable support from the special investigations which were made on this subject last year; and from the papers appended to Mr. Dampier's Minute of 25th June, 1883, copy of which has been already submitted to the Government of India. Still Mr. Finucane's enquiries in Jessore, the success which has attended broad classifications of soil in Khoordah, and certain other information of a similar character from various portions of the country, point to the conclusion that if the provisions of Chapter VIB cannot be of general application, they may be found useful in special tracts. The Lieutenant-Governor would, then, retain those provisions with some modifications of detail, and these modifications might take with advantage the direction indicated by Mr. Dampier in his Minute above referred to, copy of which has already been submitted to the Government of India. The modifications to which the Lieutenant-Governor gives a provisional adherence are these—

"The Lieutenant-Governor, whenever such a course may seem necessary owing to existing rent disputes,

to have authority to order the Revenue Officers to enter upon any tract for the purpose of holding such enquiries;

"The Revenue Officers to proceed to ascertain whether the circumstances of the tract are such that the preparation of a general Table of Rates is possible; and, if so, to prepare such a table, or more than one table if necessary;

"If the preparation of a general Table of Rates be not practicable, the Revenue officers to draw up tables of prices of different kinds of staple produce, to be authoritatively declared as the average of prices which ruled during different specified periods, and which rule at the time being: these tables when approved by the Local Government to be binding on the Civil Courts for the purposes of the Act;

"An interval to be then allowed during which the landlord shall endeavour to adjust the rents of the individual raiyats amicably with the help of the Table of Rates or the table of prices framed as above;

"If he succeeds with few exceptions he may take the exceptional cases into Court and the Revenue officers will hear no more of the matter;

"If his attempt on the whole is a failure, let the landlord apply for a field-by-field survey and assessment of rent by the Revenue officers;

"The cost in all cases to be distributed between the landlord and tenants, or thrown entirely on one of the two parties, at the discretion of the Revenue officers."

Such a procedure should, however, be applicable only when the Local Government thinks it undesirable to direct a settlement of rents or record-of-rights, and it should be liable at any time to be replaced by action under Chapter XI or Chapter XII.

*Proposal to restrict thikadars' rights to enhance.*

Proceeding now to offer some remarks on Part C, Chapter VI of the Bill, I am in the first place to call attention to the objections which the Commissioner of Patna urges against the exclusion from the Bill of restrictions on the powers of thikadars to enhance rents. The Lieutenant-Governor agrees with the Commissioner in thinking that the abuse of the thikadarí system has been the most efficient cause of rack-renting in Bihár, and he thinks the repression of that abuse is essential to the prosperity of the Province. In Mr. Rivers Thompson's opinion, however, adequate guarantees against any improper exercise of farmers' powers will be found in the provisions for the survey and record of rights, and the Lieutenant-Governor prefers therefore to trust to that radical remedy rather than have recourse to any such expedient as the imposition of disabilities on a particular class.

*Grounds for enhancing settled raiyats' rents.*

Section 74 reproduces with emendations the enhancement provisions of the existing rent-law, and enables the landlord to enhance on three grounds—(1) that the raiyat's rent is exceptionally low; (2) that the productive powers of his holding have increased otherwise than at the raiyat's *sole* expense or agency? (3) that prices have risen for reasons other than any brought about by the raiyat's *sole* agency. To the first ground no objection is offered; but it would, in Mr. Rivers Thompson's opinion, be well that the second and third grounds should be so worded as to make it clear that improvements in produce and prices, due to *combined* action among raiyats, will no more justify increase of rent than improvements due to the action of a single raiyat. The latter is a very rare cause of improvement, while the former —the construction or improvement of a village channel, and embankment, or a road may furnish an illustration—is not uncommon in parts of the country.

In regard to section 75, the Lieutenant-Governor observes that the rule of proportion is no longer made the measure of enhancement in all cases. This is a very great concession to zamíndárs, and if it operates in inducing them to spend money on improvements, the results may justify the concession.

With reference to clause (*d*) of this section, Mr. Rivers Thompson thinks it convenient to consider here the prudence of introducing into the Bill any limit on enhancements, and if a limit be desirable, the propriety of fixing on one-fifth for occupancy and five-sixteenths for non-occupancy-raiyats.

*Propriety of imposing maxima limits on rents, and recognizing separate limits for occupancy and non-occupancy-raiyats, examined.*

*General considerations.*

In the first place, then, it must be said, or rather repeated, that the idea of regulating rents by a fixed proportion of the produce is not of recent growth in this country. It is of immemorial antiquity. Much obscurity exists as to what the State share of the produce was; but it seems sufficiently probable that the share, or rather its money commutation (*rebba*), taken by the Mogul Government was one-fourth, and this fourth share is pointed to as the prototype of the existing proposals on the subject. In the earlier stages of this discussion the zamíndárs of East Bengal, dispairing of obtaining enhancements under the law, proposed that one-fifth of the produce should be allowed as rent; and the British Indian Association, improving on this proposal, suggested one-fourth. But that one-fourth was a high proportion even in the opinion of that Association is manifest from the *quasi*-official admission made by their representative organ that "if a higher rate or share (than one-fourth) be fixed for the landlord, it will trench on the very means of subsistence of the raiyat." And again, "one-fourth would be too high for many parts of the eastern districts." It is beyond question, however, that the circumstances of districts in different parts of the province admit of considerable variation in this particular.

From the preceding it will be apparent that the idea of regulating the rack-rent at the present time by assigning a *maximum* portion of the produce to the landlord has been approved by the zamíndárs: but Mr. Rivers Thompson is free to confess that he does not look on the proposals, hedged round even as they are in the Bill, with unmixed satisfaction. As one officer puts it, "no rational rent scheme can be based on a fractional share of the gross produce;" and even if the *net* produce were taken instead of the gross, it would still be very difficult to hit on a *maximum* limit which would not be unequal in its incidence over a Province

so diversified as Bengal. Another source of disquiet on this subject is the fear that the existence in the Bill of *maxima* limits may unduly stimulate that tendency to a rise in rents, which exists in every progressive community, and that efforts will be made by landlords to convert the *maximum* limit of the Bill into the ordinary measure of rents in practice. "Once," says the Bihár Landholders' Association, "let Government fix a maximum rate, and no zamíndár will rest until he has run up his rents to the prescribed limit."

All this said, however, it must be admitted that there are large portions of these Provinces in which a maximum limit on rent cannot fail to be of advantage. Those portions are so heavily rented that it would be a source of peace and contentment to the cultivators if they had some idea of the limit beyond which their landlords' demands cannot pass. The Bill gives to the landlords an effective procedure for enhancement; if it also give the raiyat some assurance of the ultimate limit beyond which, under that procedure, enhancement may not pass, it will probably do good. As Sir Richard Temple said, "the liability to uncertain demands must harass the raiyat, must damp his zeal for improving his land, and must make him chary of laying out capital upon it." While thus giving his adhesion to the principle of a maximum limit, Mr. Rivers Thompson, however, desires very emphatically to say that if he believed the safeguards in the Bill were insufficient to keep the provision what it is intended to be—a maximum never to be passed, and but very rarely to be reached—he would prefer to abandon the provision in the Bill.

*Propriety of one-fifth limit.*

As regards the propriety of the exact limit of one-fifth, Mr. Rivers Thompson admits that the question is one on which actual precision of knowledge or judgment is not possible. I am, however, to say that, after carefully considering all the information of a general and special character which has been accumulated on the point, the Lieutenant-Governor's opinion is that, for the Province as a whole, one-fifth of the gross produce allows a margin for future enhancements; while it represents as much of the crop as the raiyat can part with and thrive. References to the share of the produce to which in former times the State might in theory be entitled to take as an extreme measure from the cultivators are very greatly out of place in dealing with existing facts. When population was scanty, the area of culturable land practically unlimited, and the produce large from a soil not overworked, a village or estate could well afford to give to the rent-receiver a large share of that produce. But where there is no margin of culturable land at all, and where population presses so densely on the soil that it is a marvel how life can be supported, and where agriculture has, in this struggle for existence, degenerated into a mere "spoliation of the soil," the aspect of the case is entirely changed, and references to theoretical rules of crop-distribution at some early period of time become unmeaning. This is the case throughout large portions of Bengal and nearly all Bihár at the present day, and if one-third was a rack-rent 100 years ago in those localities, then one-fifth is a rack-rent there to-day. And to this conclusion Mr. Rivers Thompson has been led, not merely by such considerations as those now adverted to, supported, as they are by statistical information as to the growth of population which cannot be questioned, but also by the general opinion of competent authorities that the costs of cultivation have largely increased; that, owing to the absence of all improvements in the system of agriculture, the average harvest yield is stationary where it is not growing less; and that the struggle for life among the agricultural community is, the deceptive influences of a few years of unusually good harvests notwithstanding, daily becoming more severe. It may be added in this connection that Mr. Rivers Thompson has given a practical proof of his conviction upon this point in his recent orders reducing the rental which had been assessed on the Khoordah Estate.

*Objections to separate limits for occupancy and non-occupancy-raiyats.*

If the one-fifth, or 20 per cent. limit, be justifiable as regards occupancy-raiyats, the question remains—Is five-sixteenths or 31¼ per cent. of the produce fair as regards the non-occupancy-raiyat? On this point I am to suggest, for the consideration of the Council, whether the provisions of section 119 of the Bill, as far as they refer to what is there called the "ordinary" raiyat, do not introduce an unconstitutional and dangerous principle into the law of Bengal. In the statement made by the Hon'ble Mr. Reynolds in his speech in Council, to the effect that it is not, and never has been, the law of Bengal that an occupancy raiyat should hold at privileged rates, the Lieutenant-Governor concurs; and it therefore becomes a matter for consideration whether, if the one-fifth limit be fair for raiyats with occupancy-rights, five-sixteenths is not unfair for raiyats without them. The origin of the provision as it stands is probably due to Sir Richard Temple's effort to fix occupancy-rates with reference to competition rates, by giving the occupancy-raiyat a beneficial deduction on such rates. But the enquiries which were made in connection with that proposal showed that competition rates hardly existed, and that custom, not competition, ruled the rents of occupancy and non-occupancy-raiyat alike, unless where considerations of caste intervene. Recent enquiries point to the same conclusion, and it is therefore, in the Lieutenant-Governor's opinion, a matter of doubtful expediency that a novel principle should now be introduced into the law of these Provinces, which, besides, would be calculated to lead to general enhancements of rent, which it is the avowed object of the Government to avoid. It must not be forgotten that if we call into existence two classes of occupancy-raiyats, one holding at higher rates than the other (and this would be the effect of sections 79, 95, and 119 of the Bill combined), the tendency will be towards an equalization of rates at the higher level. As at present advised, Mr. Rivers Thompson thinks that this is a danger which we should not run the risk of incurring, and that if a rack-rent limit is to be preserved in the Bill at all, it should be the same for both occupancy and non-occupancy-raiyats. He has no objection to five-

sixteenths of the produce in the case of under-tenants (khurfas) who can never acquire occupancy-rights; but he thinks that there is great danger to the cultivating classes in the provision of a separate limit for occupancy and non-occupancy-raiyats. Separate limits are tantamount to a premium on the discouragement of fixity of tenure.

I am, therefore, to say that the Lieutenant-Governor is not prepared to support those provisions of the Bill which recognize a difference between the maximum limit on the occupancy and non-occupancy rents. The longer Mr. Rivers Thompson considers this point, the more satisfied is he that these provisions are likely to cause serious injury to the best interests of the peasantry of these Provinces; while the retention of them in the Bill impedes the reasonable settlement of the question before the Council. If the maximum or rack-rent limit on occupancy and non-occupancy rates alike be fixed at the same proportion of the produce, then, in the Lieutenant-Governor's opinion, it would be possible to dispense altogether with compensation for disturbance, which is only useful as a check upon the abuse of the landlord's power to eject. If a landlord can only obtain from a non-occupancy tenant under the law a rent not greatly exceeding what he can get from the settled raiyat, he probably will not care to eject the former, and thus checks upon his power of ejectment will be less needed. If, however, the motive for ejectment supplied by the Bill as it stands be not removed, and the same limit be not imposed on the enhancement of the rents of occupancy-raiyats alike, then some provision must be made for compensation for disturbance as a precaution against an abuse of the right to eject. To this point I am to return further on.

*Check on rack-renting deducible from equalization of maxima limits on raiyats' rents.*

I am here also to draw attention to the second check on rack-renting by mahájans to which allusion was made in paragraph 15 above. As long as it is in the power of a tenure-holder to exact up to 31¼ per cent. of the produce, so long will a wide field for rack-renting be provided, and the growth of occupancy-rights at fair rents suppressed. But if the rack-rent limit be reduced to a reasonable limit within which a fair rent may be fixed, then remunerative cultivation by non-occupancy-raiyats will be possible, and the growth of occupancy-rights among that class not discouraged. The discouragement will be to those who buy occupancy-rights, not for the purposes of cultivation, but for sub-letting. They will be deterred from such investments by the fact that they cannot recover from their tenants much, if anything, more than they themselves will have to pay their landlords. In any case their tenants will be allowed a margin to live on and a fixed *status*. All this would be impossible if separate limits be preserved in the Bill. The occupancy-right would then be valueless. for it would carry with it no right to enjoy any margin of profit.

*Objection to subjecting accreting* dearah *lands to checks on enhancements.*

21. Passing on to other portions of the Bill, the Lieutenant-Governor would suggest that, from the provisions of sections 76 and 78, the case of *dearah* or alluvial lands, and new reclamations, be excepted. These lands are quite exceptional in character, and need special treatment. They may be worthless this year, and most productive the next. According to custom in various parts of the country, alluvial lands are rented at merely nominal rates on formation (though they are then usually unproductive sand) in order that the raiyat may establish some claim to hold them when the soil has fully formed. The full formation may be brought about by a rich deposit in a single season. It would be very hard, then, on a landlord, if he were precluded from doing more than doubling a nominal rent for such land within ten years. In the interests of landlords generally, therefore, and having full regard to what is due to raiyats, the Lieutenant-Governor would suggest that partially formed alluvial accretions and new reclamations be excepted from the effect of these sections, For accretions or reclamations which are fully formed and ordinarily productive, there is no no need to provide exceptional treatment.

22. To Part E of this chapter the Lieutenant-Governor has no objection, fully agreeing as he does in the policy of facilitating the conversion of corn-rents into money-rents. Exception has been taken to these provisions as one-sided, and it is claimed that the faculty of suing for commutation should be vested in the landlord as well as in the tenant. Impressed with the economical disadvantages of the general prevalence throughout a district of the *baoli* system, the Lieutenant-Governor would be glad to see a system of money-rents take its place, and he would make no objection to affording to both parties—to the landlord as well as to the tenant—the facilities which the Bill now allows to the raiyat alone.

*Occupancy rights in* bastu *lands.*

23. *Chapter VII.*—The principle which underlies this chapter seems to the Lieutenant-Governor to be that the right of a settled raiyat in the homestead portion of his holding is separate from, and independent of, his right in the arable lands which he rents. Wherever the facts are as supposed, wherever the *bastu* holding is distinct from the arable holding, no objection can be taken to the section. But there are, it is understood, portions of the country where this custom does not prevail, and where the *bastu* even bears no rent, being given as a matter of course with the arable land and therefore not separable from it. In these parts the principle of the section might, if enforced, lead to difficulties. The Lieutenant-Governor would therefore follow local custom. Where *bastu* lands are separate from the *jotes*, he would apply the section. To the cases where *bastu* lands are not separable from the *jotes*, he would not make the raiyat's interest in *bastu* longer or more short-lived than in *raiyatí* land. The general principles of the Bill would of course be applicable to both classes of land without distinction.

*Privilege of non-occupancy-raiyats.*

24. *Chapter VIII.*—As might be expected, this chapter has met with extreme opposition from zamíndárs, while the revenue and judicial officers who have been consulted on it seem to be divided into hostile

camps. Those whose service has been mostly in Bengal Proper are against its proposals as being an innovation of an unnecessary character, while the Bihár officers would accept them, provided freedom of contract between the landlord and the non-occupancy-raiyat be not barred. As the chapter stands, the non-occupancy-raiyat can only be ejected (1) for arrears of rent, (2) for violation of the conditions expressed or implied of the lease, (3) for refusal to pay enhanced rents; and if ejected on any of these grounds, he is declared entitled to compensation for disturbance as well as for improvements. The Bihár excutive officers, as the Lieutenant-Governor understands their proposals, would not limit in any way the landlord's power to eject, but in return for this freedom would give the tenant, if ejected, compensation for disturbance. They say nothing of compensation for improvements, though it appears from the earlier papers that the Bihár Committee, under Mr. Halliday's presidency, were on the whole in favour of the proposition.

*Objection taken to the use of the term 'ordinary' raiyat.*

In commenting on this chapter the Lieutenant-Governor must, in the first place, take exception to the term "ordinary" as applied to the non-occupancy-raiyat. All the information before this Government goes to prove that the occupancy status in these provinces is (if facts were duly recorded) the rule, while the non-occupancy status is the exception. If the term "ordinary" raiyat is to be maintained, it would be more in accordance with facts to apply it to the occupancy-raiyat than to preserve the meaning it now has in the Bill. It would, however, be better to substitute for "ordinary" the term "non-occupancy," or "non-settled."

*Compensation for improvement.*

Coming now to the criticisms on the chapter, the Lieutenant-Governor conceives, in regard to compensation for improvements, that, notwithstanding all that has been said to the contrary, no reasonable dissent can be maintained from the proposition that it is desirable to give security for the invested capital of the tenant, no matter what that tenant's *status* may be. The history of the rent-question all the world over teaches this lesson, that want of such security has been a hindrance and a bar to good husbandry, and therefore politically inexpedient. It seems to Mr. Rivers Thompson that if an ordinary tenant improves his holding by sinking capital on it, he is as much entitled to compensation as if he had lent his money to the landlord on a promissory note payable on the determination of his tenancy. It is no valid objection to say, with the British Indian Association, that in this country ordinary tenants never do improve their holdings, and that the compensatory provisions of the law are therefore unnecessary. The fact may be as the Association asserts; and it is possible that for a long time no practical results will follow the adoption of the provision in question. At the same time experience proves that agricultural improvement is a plant which flourishes only in the soil of security, and it is useless to argue that because it has not flourished while insecurity prevailed, therefore it will not take root when security becomes the rule. The Lieutenant-Governor has in a previous communication informed the Government of India of the extreme importance he attached to stimulating agricultural improvement. No means in his judgment could be more legitimate than that afforded by this provision of the Bill, which besides, has already found a place on the Indian Statute Book in section 44 of the North-Western Provinces Rent Act (XVIII of 1873). It is unreasonable to expect a raiyat to improve his holding if you do not secure to him some fruits of his capital and industry.

*Compensation for disturbance.*

But it is asserted if compensation for improvements to the non-occupancy raiyat be in accordance with good policy and natural justice, the same cannot be maintained of compensation for disturbance. On this important question the Lieutenant-Governor must, in the first place, refer to what has been already said in paragraph 20 above on the unwisdom of legally establishing different limits on rent rates payable by settled and unsettled raiyats. His belief is that the limits for both should be the same; and if his belief be accepted by the Council, he thinks that it is unnecessary to impose a check on the abuse of the landlord's power to enhance non-occupancy rents by any such provision as this of compensation for disturbance. But if on this point the Council disagree with him, and decide on preserving a limit for non-occupancy rates in excess of settled raiyats' rates, then Mr. Rivers Thompson thinks that the incentive which would be thereby furnished to landlords to rack-rent and defeat the growth of tenant's right should certainly be subjected to a positive check. As to what the character of the check should be the Lieutenant-Governor's judgment is in the nature of a compromise between divergent views. He does not, on the one hand, accept as just and fair to the landlord the provisions of the Bill which entitle all non-occupancy raiyats, if ejected, to compensation for disturbance; nor, on the other hand, can he approve the position that a landlord is to be absolutely free to eject with impunity a raiyat, say, in the 11th year of his tenancy, who is industrious and law-abiding, and willing to conform to his landlord's reasonable demands.

*Argument of identity in status of the non-occupancy-raiyat of to-day and the* paikhást *of the times of the Permanent Settlement examined.*

The uncompromising opponents of the provision in question appeal to the customary law of the country at the time of the Permanent Settlement, and to the status of the *paikhást* raiyat at that time, in proof of their contention that the non-occupancy-raiyat of to-day should have no privileges beyond those which his contract with the landlord may secure to him. On this I am to say that it seems, as from the beginning it always has seemed, to the Lieutenant-Governor, that too much stress is laid throughout these discussions on arguments of an antiquarian character, and too little stress on what is politically expedient in the circumstances of the present time. Mr. Rivers Thompson believes it to be true (though it may not be universally admitted) that

the *paikhást* raiyat of the last century was only a "tenant-at-will," but the fact of competition then being among zamíndárs for raiyats, and not among raiyats for lands, rendered the *paikhást* raiyat's condition better in many respects than the condition of a modern "tenant at-will." In fact, if *quoad* the "tenant-at-will" the modern landlord be master of the situation, the *paikhást* raiyat was usually its master *quoad* the zamíndár of 1793. It therefore seems to the Lieutenant-Governor that appeals to the status of the *paikhást* raiyat of a century ago are calculated to throw but little light on what treatment should be accorded to the non-settled raiyat of to-day. There are differences on essential points, not the least important being that, while the *paikhást* raiyat of the Regulations held at low rates, the non-settled or non-occupancy raiyat of to-day enjoys no such privilege, but usually pays as much as occupancy-raiyats do.

From one point of view, however, the zamíndár of a century ago may be, without any risk of dispute, said to have had the power of ejecting the *paikhást* raiyat, because he had only to ask occupancy rates to assure the raiyat's throwing up his holding. So far there is no doubt about the *paikhást's* holding being more precarious than the permanent cultivators'. As Mr. Colebrooke says, "the inconvenience of remote cultivation makes it necessary that he (the *paikhást*) should be at liberty to relinquish at any time the land which he uses; and consequently his own continuance being precarious, he cannot have a title of occupancy which shall preclude the landlord from transferring the farm to a resident husbandman desirous of undertaking it." If, however, the *paikhást* agreed to pay up to the pargana rate, which was all that could be demanded from the resident husbandman, it is very doubtful if the zamíndár had the power to eject him; for in the discussions which preceded the enactment of Regulation I of 1793, the Governor General authoritatively wrote—"Whoever cultivates the land, the zamíndár can receive no more than the established rent, which in most places is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with the power to commit a wanton act of oppression." (Appendix to Fifth Report.) The truth, however, is that in these days the thoughts of zamíndárs were directed to installing raiyats, not to ejecting them. Ejectment in its present acceptation is a modern growth, and in every advancing society it is being placed under restrictions.

Notwithstanding all this, however, it cannot be denied that there has grown up a custom which our Courts have recognized, under which zamíndárs exercise the right to eject non-occupancy-raiyats for other reasons than non-payment of rent; and that custom, though it now calls, in the general interest, for some modification, cannot, in the Lieutenant-Governor's opinion, be abrogated. If there be little force in the argument that the provisions of the chapter are unnecessary because the raiyats to be legislated for are few, there is, in Mr. Rivers Thompson's opinion, much force in the contention that the proposals as they stand are objectionable because they deprive the landlord of discretion as to who shall become a settled raiyat in his estate, and because they virtually fine him for exercising that statutory power with which other provisions of the Bill invest him.

*Lieutenant-Governor's proposals in regard to compensation for disturbance.*

It seems to the Lieutenant-Governor that the circumstances of the case call for a compromise between the claims of the zamíndárs to eject an unsettled raiyat at discretion, and the provisions of the Bill which give the raiyat compensation no matter for what reason ejected. That compromise might, Mr. Rivers Thompson thinks, fairly take this form (always supposing that his earnest suggestion to equalize the limits of occupancy and non-occupancy rates be not accepted by the Council). As a landlord cannot eject a non-occupancy-raiyat except in execution of decree, let the Court in ejectment suits have jurisdiction to fix a fair rent, at which it shall be optional with the landlord to let the raiyat sit or not. If the landlord consents to the raiyats sitting at that rent, and the raiyat agree, no difficulty arises. If the landlord abides by the Court's orders, but the raiyat demurs, let the raiyat be ejected without compensation. If the landlord refuses to let the willing raiyat sit at the rent declared fair by the Court, being within the maximum limit, then make the landlord pay the raiyat compensation for disturbance. The landlord will thus retain the ultimate right of ejecting the raiyat, and this is all he needs in order to get rid of a raiyat for other reason than refusal to pay an enhanced rent.

*Form of receipts for rent.*

25. *Chapter IX*—Sections 96 to 99 inclusive call for no remarks. In regard to section 100, it is pointed out that the form of receipt will not apply to some of the eastern deltaic districts, where the area of the holding varies from year to year with the price of produce or other causes, it is impossible therefore to define that area in any except the receipt which forms the acquittance for the year's demand. The adjustment of the terms of the receipt to such exceptional circumstances is a matter for arrangement, and the Lieutenant-Governor would retain for the Local Government a power to fix the form of the receipt, as circumstances may dictate, while preserving the substance.

Several critics of the Bill, among others the British Indian Association, draw attention to the provisions of section 101, and declare that they are innovations, the zamíndár being "on no earthly ground bound to give" the statement in question. They would therefore omit section 101; or, if it be retained, they would make the raiyat pay for the statement of account which it prescribes. The Lieutenant-Governor would, however, point out that, so far from being an unreasonable innovation, the provisions in question were, for 80 years after the Permanent Settlement, the law of the land. "Receipts for all sums received, and a receipt in full on the discharge of every obligation," were prescribed by section 63, Regulation VIII

of 1793; and it was only when that section was repealed by Act XVI of 1874 that the provisions ceased to have binding force, though doubtless zamíndárs had ignored them. The Lieutenant-Governor considers the provisions salutary, and to the revival of them he gives his support. They will introduce no change into the existing practice in a large portion of these Provinces where acquittances in full (*farkhattis* in the vernacular) are always given at the end of the year when accounts are cleared up.

*Deposits of rent in Court.*

26. Coming now to the section regarding deposits of rent, I am to state that considerable opposition has been exhibited both by zamíndárs and Government officers to the provision of section 103 (*a*), which makes the raiyat's *belief* that his rent will not be accepted on tender by the landlord a sufficient reason for depositing it in Court. The opposition on this point is perhaps to some extent a matter of sentiment, but it is also, in the Lieutenant-Governor's opinion, not without reason, for the withdrawal of deposits from Civil Courts is attended with delay and some expense, while the freedom which the section would confer on the raiyat tends unnecessarily to alienate him from the zamíndár. Mr. Rivers Thompson is aware of what has been written on the subject from the opposite point of view—among others by the Hon'ble Mr. Reynolds in his memorandum of 18th May 1881—; and he observes that in the Statement of Objects and Reasons it is re-asserted that the present declaration of previous tender has become a mere form. This is, probably, in a measure, true; but it certainly is not universally true; and the Lieutenant-Governor is therefore disposed to defer to the opinions of those experienced officers who deprecate the adoption of the section as it stands. He would accordingly be glad if means could be adopted which would discourage deposit without previous tender, while still preserving to the raiyat the faculty provided by the section. This means might, Mr. Rivers Thompson thinks, be found in an adjustment of stamp duties to the requirements of the case. Deposits after tender might, as at present, be made on a stamp of the value of eight annas, but deposit *without* tender under the provisions of section 103 (*a*) might be made chargeable with a higher stamp duty. It will be remembered that under the practice current before Act X of 1859, deposits of rent in Court were chargeable with stamp duty, as in suits for arrears. The suggestion thus made is no doubt open to obvious objections; but so is the section as it stands in the Bill, and the question is therefore a choice of evils. As no very widespread, though undoubtedly some, hardships have arisen from the existing law, in which tender before deposit is essential, it seems to the Lieutenant-Governor that any extension in the raiyat's favour of existing privileges should not be made unnecessarily at the landlord's expense, and should carry with them deterrent incidents to prevent abuse.

Finally, there is no reason apparent to the Lieutenant-Governor why the existing jurisdiction of the Civil Courts in regard to deposits should not be retained. The discretion conferred by sections 104 and 106 on the officer empowered to receive deposits can be exercised as effectually by a Rent-Suit Munsif as by a revenue officer; and as the Civil Courts will continue to exercise jurisdiction in rent-suits under the Bill, there is a distinct inconvenience in establishing a dual jurisdiction in connection with the receipt and acknowledgment of rent arrears.

*Rents in kind: objection to filing* danabundi *papers in Court in all cases.*

27. On Part F of Chapter IX the Lieutenant-Governor will only remark that it should be made clear, under section 117, that under the system called *agore-batai* the landlord has a right to watch the crop up to the division, and that the raiyat cannot remove the crop till division has been made. Under section 118, also, Mr. Rivers Thompson does not, with the majority of Bihár officers, see what good is to come from filing the *danabundi* papers in Collectors' offices in all cases. When the system of village agency is organized in accordance with the plan indicated in my No. 309T.—R., dated 1st June, 1883, the patwárí and kánúngo will be the proper custodians of such papers. But until that agency is established, the Lieutenant-Governor thinks that it would suffice if in disputed cases alone the *danabundi* papers should be deposited in the Collectorates. To deposit them in undisputed cases would be to crowd the record-rooms with a mass of useless papers.

*Application of the Bill to proprietary estates under khás management. British Indian Association's objection to Bill as not applicable to Government estates examined.*

28. With reference to section 121, the question arises whether that section, taken with section 20, covers the case of an estate managed by the revenue authorities on account of the recusancy of the proprietors. Fair rents are, as section 121 stands, to be fixed "on the application of the landlord or of the tenant." When the State receives the rents, allowing the proprieter malikana, will it be deemed the landlord for the purposes of the section? The answer should, in Mr. Rivers Thompson's opinion, be in the affirmative, and made clear in the Bill.

In connection with this subject, the Lieutenant-Governor will notice a remark made by the British Indian Association, "that nothing would create greater confidence in the minds of the people in the justness of an Act defining the rights and obligations of landlords and tenants, than the fact that it applies equally to Government in its capacity of landlord as to private landlords." Concurring in the justice of that remark, Mr. Rivers Thompson desires to emphasize the fact, that the rights and privileges which the Bill proposes to recognize in regard to raiyats generally, will practically be as largely enjoyed by the raiyats in Government estates, as by those in estates which are permanently settled. Fixity of tenure, fair rents, and free sale, will, the Lieutenant-Governor trusts and believes, within a short period of time prevail throughout all Government estates where these advantages do not now exist. If we turn from raiyats to landlords, the Lieutenant-Governor would say that the only privilege which Government retains, over and above those conferred by the Bill on zamíndárs, is the

privilege of the certificate procedure; and the reason why Government may fairly reserve this privilege is obvious. The certificate procedure in the hands of public officers should be safe from abuse, for there is no direct incentive to abuse it, and its exercise is subject to watchful official supervision. That is one, and in itself a sufficient reason, why a procedure for collecting rents may be given to the Government which cannot be safely entrusted to private individuals. But there is, besides, the paramount reason that the rents collected by Government are really revenue, and the procedure for enforcing payment of State dues must, in the general public interests, be more summary than the procedure for enforcing private dues. If this were not so, the ultimate result would be the employment of larger establishments, greater expenditure, and increased taxation. Thus a summary procedure for collecting the public revenue, while necessary if the government of the country is to be efficiently administered, and while not open to the objections to which a summary procedure for collecting private debts is opposed, is in the long run the easiest and cheapest for the people. Nor is this principle inapplicable in case of estates of disqualified proprietors managed by Government, for the rents of such estates include the revenue.

*Improvements on raiyats' holdings. Measurement of lákhirájí lands within an estate.*

29. *Chapter X.*—The provisions of Part A of this Chapter have the Lieutenant-Governor's general approval; but he thinks that sections 127 and 128 might more explicitly declare that where the improvement to be effected does not lie within the holdings to be benefited (as in the case of an embankment), the raiyats should still have the option of effecting it. Where an improvement affects more than one holding, the landlord should serve notices on all the raiyats, and raiyats collectively might serve notices on their landlord. Perhaps, as under the General Clauses Act, the singular includes the plural, the use of the word raiyat may be taken to mean all raiyats affected; but it might prevent mistakes if the point were made quite clear.

In regard to Part B of this Chapter, dealing with the landlord's right to measure land within the limits of his estate, the Lieutenant-Governor has some doubt whether the section as drafted expresses the intention of the draftsman as stated in paragraph 92 of the Statement of Objects and Reasons. As the section of the Bill stands, it is questionable whether a landlord can measure a *rent-free* holding forming part of his revenue-paying estate. Under the existing law the landlord is precluded from measuring such a holding, because he is not in receipt of rent from it; this it is proposed in the Statement of Objects and Reasons to alter, but the alteration does not appear in the Bill. The Lieutenant-Governor must confess that he does not view the proposed change in the law without some misgivings; but if the law is to be altered, he would provide against the abuse of the power of measurement, and against the possible creation of disunion between the rent-free holder and his tenants, by insisting on the landlord contenting himself, except for good cause shown, with a survey of the external boundary of the tenure. This will give the area, which is all the landlord can want to know in the great majority of cases. Under any circumstances the zamíndár, if so advised, could sue in the Civil Courts to establish his rights if he is under the belief that the lákhirájdar holds more lands than he is entitled to hold under his grant.

*Inadequate provision made in the Bill for measurement of raiyats' holdings.*

30. Sections 134 to 137 are given as reproducing sections 176 and 177 of the Bengal Bill; but the Lieutenant-Governor does not find that section 178 of the latter Bill, which itself reproduces section 38 of Act VIII of 1869, finds any place in the Bill now under discussion. This seems to Mr. Rivers Thompson a serious omission; for many in-coming landlords, especially auction-purchasers, will find it very difficult to overcome combinations to withhold rents among their raiyats, if deprived of the procedure provided by section 38 of Act VIII of 1869. The justification for the exclusion of that procedure from this Bill is the introduction of the provision for settlement of rents and record-of-rights. These provisions, however, are at present only applicable to disputes on a large scale; they can only be put in motion by the Local Government, and are therefore inapplicable to such cases as section 38 of Act VIII of 1869 was intended to meet. Accordingly the Lieutenant-Governor trusts it will be found possible either to amplify this part of Chapter X so as to include the provisions of the existing law regarding the measurement of land when it cannot be ascertained who are the persons liable to pay rent, or so to extend the provisions regarding record-of-rights as to enable the Government to apply the procedure to suit the wants of individuals.

*Merger.*

31. In regard to the doctrine of merger, the Lieutenant-Governor has nothing to say except that, as the doctrine is novel, it may be made clear that if a landlord buys an occupancy-right under Chapter V of the Bill, the occupancy-right is extinguished, and the land becomes part of the raiyattí land of the estate. The provisions regarding merger probably imply this, but it would be well by an explanation to make the matter quite plain.

*Suspension and Remission of Revenue or rent on failure of crops.*

32. Here I am to take the opportunity of stating that the Government of India has recently asked this Government whether it would not be desirable to introduce into the Tenancy Bill a section similar to section 23 of the North-Western Provinces Rent Act (XVIII of 1873). The question had already attracted the attention of the Lieutenant-Governor, and he is now prepared to say that while he has no objection to the introduction of such a provision into the Tenancy Bill, he considers that it will not be as productive of good results in Bengal as in Upper India. In the first place it must not be forgotten that by far the greater part of these Provinces is permanently settled, the revenue bearing to the rental a proportion of one to five, if not less; and in the next place that there is usually a long chain of subinfeudation between the zamíndár

and the raiyat. No zamíndár with a small revenue charge and a large rental will consent to remit rent *in proportion* to a remission of revenue, while if he only remits a sum equal to the remission made him, the effect on the raiyats would be small even if it ever reached them through the long line of tenure-holders which often intervenes between them and the proprietor. These, however, are objections of practice, not of principle, and the provision might be useful in temporarily-settled estates. From this point of view the Lieutenant-Governor makes no objection to the introduction of a section similar to section 23, Act XVIII of 1873. If such a provision be introduced, it would become desirable to charge interest on the suspended demand; and therefore advantage should be taken of this opportunity to repeal section 2, Act XII of 1841, which prohibits Government from charging interest on revenue arrears.

*Settlement of Rents and Records-of-Rights.*

33. *Chapters XI and XII.*—The provisions regarding settlement of rents and records-of-rights are, in the Lieutenant-Governor's opinion, among the most important of the Bill, and he observes with great satisfaction that they meet with but few, and these unimportant, objections at the hands of the representative associations in these Provinces, while most officers approve of them. Reserving minute criticisms for later communications, Mr. Rivers Thompson will only say, in regard to Chapter XI, that while, on the one hand, in section 157 the period allowed for objection appears to be too short, on the other hand, the facilities for appeal and for contesting the Settlement Officer's proceedings afforded by sections 160 to 162 are too wide and numerous. The matter is one which calls for finality; and the Lieutenant-Governor sees very serious disadvantages in the proposals to invest the Civil Courts practically with the faculty of revising on all points the work of the Settlement Officers. On questions of law there is no objection to an appeal being allowed to the Civil Courts; but on questions of fact such as are involved in clauses (*b*) and (*c*), proviso (2) of section 160, it seems to the Lieutenant-Governor that the Civil Court is a less competent judge than the Settlement Officer. If after the *jamabandí* has been published, and has, under section 159, acquired validity, a material error of fact is discovered, there would be no objection to a correction being made, as is now done under section 25, Regulation III of 1872 (Sontal Pargana Settlement Law); but in this case the authority to direct the correction should be the Local Government, or some executive authority vested with powers of the Local Government, and not the Civil Court. It would, in the Lieutenant-Governor's opinion, seriously diminish the beneficial operation of these provisions if the *jamabandí* were open to revision by the Civil Courts on any question of fact; the zamíndár, who has the longest purse, would be sure to prevail over the raiyat in the long run, no matter how weak the former's case; and therefore Mr. Rivers Thompson very strongly recommends that sections 160 to 162 be revised with reference to these considerations.

34. Section 164 of the Bill as drafted makes the previous sanction of the Governor-General in Council necessary whenever the Local Government *propria motu* desires to make a record-of-rights. This, in Mr. Rivers Thompson's opinion, is an unnecessary restriction on the discretion of the Local Government, and one which can lead to no possible good, while by delaying action it may cause a good deal of harm. Commenting on section 151, the British India Association say: "The circumstances which would justify the removal of a tract of country from the jurisdiction of the ordinary Courts, and placing it, for the purposes of settlement of rent, under the jurisdiction of revenue officers, must be of an exceptional character. The first ground, therefore, on which this section would allow such removal is very objectionable. Let the Local Government have the power of ordering such a transfer when an agrarian disturbance is threatened, or when settlement in a khás mehal is to be effected; but it would be dangerous to give a number of landholders or a number of tenants the right of applying for it." Without admitting the reality of the danger referred to (for the right of sanctioning or refusing the application will still rest with Government), Mr. Rivers Thompson agrees with the Association in thinking that in such matters the Local Government is the best judge of when and how action should be taken; and if this be true regarding the questions raised by chapter XI, it is obvious that it is not less true of the operations under Chapter XII. The Lieutenant-Governor would, therefore, recommend the omission of the words "in any case with the previous sanction of the Governor General in Council" from section 164.

Finally, provisions similar to those of sections 157 to 160 should (with the modifications suggested above) be introduced into Chapter XII. Full opportunity for discussing disputed facts should certainly be afforded before the record-of-rights becomes final and binding. It is presumed that in making the record the revenue officer would have full power to make all surveys and enquiries that might be necessary to prepare a complete record of all rights in the tract in which he was operating. As this is not expressed in the section, it might be well to obviate the possibility of doubt upon the point by a definite provision.

*Effect of the Bill on existing rents.*

35. An objection is taken by the Committee of the Bíhár Landholders' Association to this portion of the Bill, on the ground that no assurance is given that the settlement procedure will not be utilized to reduce existing rents; and the Lieutenant-Governor believes that the idea is very prevalent among zamíndárs that the effect of the Bill as a whole will be to effect an immediate and serious reduction in their rents. As far as the Lieutenant-Governor understands the matter, this is not the intention of the legislature. When the Bill becomes law, indeed, it will not be possible for any landlord to recover by legal proceedings rents above the *maxima* or rack-rent limits fixed by the Bill; and in whatever tracts of country settlement proceedings under Chapters XI and XII may be instituted, the *jamabandís* resulting from such proceedings will show no rents above these limits. Subject, however, to this restriction, existing rents

would not be interfered with under the Bill; they would be recorded as payable for the existing holding.

*Distraint of crops. Objection to modification of existing law in case of non-occupancy and khurfa raiyats.*

*Chapter XIII.*—The provisions regarding distraint have met with as much opposition from the zamíndári interest as perhaps any other part of the Bill; and for his own part the Lieutenant-Governor thinks that there is some ground for this opposition. He does not, indeed, think that in the case of settled raiyats—and they, according to all information, will form the great bulk of the rent-paying class—landlords would have any serious difficulty in collecting their rents, even if distraint were altogether abolished in regard to occupancy holdings. Occupancy-rights are now valuable, and will grow in value. They afford adequate security for the landlord's rent; and if in regard to them facilities for distraint be abolished, the landlords will not ultimately be the sufferers. Mr. Rivers Thompson would be glad to think that settled raiyats themselves will suffer nothing from the danger they are likely, in the beginning at all events, to run of losing their all through unpunctuality in paying their rents.

But if landlord's rents are adequately secured by the transferability of the occupancy-right, there is no such security in the case of non-occupancy and *khurfa* raiyats. It is in regard to these that the restriction of the landlord's power to distrain will be most felt. That the power to distrain as it now exists has been abused is beyond question; that it is still abused, especially in Bíhár, is equally indisputable, though the abuse is probably not so flagrant nor so extensive as it once was; but granting all this, the Lieutenant-Governor has reason to believe that the abuses are quite within the ability of the executive to check and to suppress, and he therefore hesitates to deprive landlords (for the provisions of the Bill virtually mean deprivation) of the only effective means they have of collecting rents from the "non-occupancy" or *khurfa* raiyat. Mr. Rivers Thompson would be quite prepared to agree to any proposals which have for their object the more effectual enforcement of the existing law of distraint, and he thinks this may be attained by making violations of the existing law of distraint punishable, as in the case of criminal trespass, under the provisions of the Penal Code, and by enacting that persons benefiting by such offences should be similarly liable to punishment. Thus armed, the district officers should be able to deal adequately and fully with the abuses of distraint, and he would therefore submit that the present law of distraint might with such substitution of penalties for civil damages be left unaltered in regard to all non-occupancy-raiyats. If this view were accepted, the Lieutenant-Governor would recommend the abolition of distraint altogether in regard to occupancy holdings. Indeed, with the stamp-duty chargeable under section 167 (2) of the Bill, it is not apparent what great advantages landlords would derive from the distraint sections of the Bill which are not secured to them already by the procedure for attachment before judgment under the Civil Procedure Code.

*Procedure for recovery of arrears of rent in Court. Proposal to extend patní sale procedure to register tenures.*

37. *Chapter XIV.*—It is very generally admitted, and properly so in the Lieutenant-Governor's opinion, that the abbreviated procedure for the recovery of rent contained in this chapter is an improvement on all previous proposals on the subject. Partizans of the zamíndári party, indeed, assert that, while their rights have been invaded in one direction, nothing has been done to facilitate the recovery of their just rents; but further than bringing to the notice of Government a proposal made in 1876 by Mahárájáh Sir Jotendra Mohun Tagore to extend the patní procedure to all tenures and tenancies, they have done nothing to suggest a better procedure. The Lieutenant-Governor has given his careful attention to the Mahárájáh's proposal; and while he is unable to adopt them in their entirety he is willing, as at present advised, to extend a reasonable modification of the patní sale procedure to tenures of all sorts, which either through the motion of the owner or the landlord may be registered in the manner indicated in paragraph 14 above. In this Mr. Rivers Thompson goes somewhat further in the direction desired by the zamíndár than section 147 of Sir Ashley Eden's Bill, which limited the summary sale procedure to patnís, to tenures at the creation of which the right to sell was reserved, and to permanent tenures with a rental of Rs. 50 per annum. It remains to be seen whether zamíndárs, by causing all 'tenures' to be registered, will, in consideration of the more summary procedure for recovering arrears, convert into middlemen those who are now nominally occupancy-raiyats. If they do, their action will further the Lieutenant-Governor's views regarding the preservation from rack-rents of the actual cultivators of the soil.

But while the Lieutenant-Governor is thus disposed to apply a summary procedure for recovery of rent to all tenures, he is very strongly of the opinion that no such procedure could be safely applied to *raiyatí* holdings in the possession of actual cultivators. Apart from the reasons which the Rent Commission give * for refusing to invest inferior landlords with summary powers, Mr. Rivers Thompson believes that it would be a mere mockery of justice to give occupancy-raiyats, sold out of their holdings under a summary procedure, the right to sue for redress. His holding is the occupancy-raiyat's all, and deprived of this he becomes a pauper, unable to sue. He becomes an incumbrance on the community which, under the circumstances of the country, cannot provide him with industrial employment, and a source of embarrassment, especially in times of scarcity, to the Government. Nor does the Lieutenant-Governor think that sufficient security against wrong-doing would be afforded by any such arrangements as those contemplated by section 148 of Sir Ashley Eden's Bill. There are many zamíndárís

* "Experience shows that superior landlords rarely abuse the (patní) procedure, while if they do abuse it, they are persons of substance against whom a decree for damages can be effectually enforced. There are grave doubts whether the result would be equally satisfactory if the same power were entrusted to petty landlords."

in these Provinces in which regular and systematic accounts are now kept; but Mr. Rivers Thompson would hesitate very long indeed, before he would, on that account, vest the proprietors with exceptional privileges in regard to the recovery of rent. When an organized village agency of record and account is established throughout these Provinces, or portions of them, things may be different, and then summary facilities for recovering rent from occupancy-holdings may properly be granted, which cannot be allowed without public danger. But for the present, the Lieutenant-Governor thinks that as much as can reasonably be done to facilitate the secovery of arrears from raiyats has been done by the Bill. Indeed, many experienced officers doubt whether the Bill could, with safety, push simplification further than it has done; and some are disposed to take exception to that portion of section 198 which vests selected munsifs with final jurisdiction in suits when the arrears claimed do not exceed Rs. 50. The Lieutenant-Governor notices that the Rent Commission proposed to confer such summary jurisdiction in Munsifs only up to a maximum claim of Rs. 10. It is to be observed that in the great majority of suits for arrears of rent the sum claimed does not exceed Rs. 50; so that in point of fact the practical effect of the section will be to prevent appeals altogether, except in a question of title or rate. The change, therefore, which the Bill proposes to introduce into the present law is a very radical change, and a very great concession to zamíndárs, which many competent judges do not contemplate without some doubt as to its expediency. The Lieutenant-Governor, however, thinks that, on the whole, the section may stand, especially as it will be in the discretion of the Government to appoint carefully selected officers for the trial of rent-suits. According to the ancient law of the country, fixity of tenure was conditional on punctual payment of the rent, and when there is no dispute as to title or rate, the decision of a competent and experienced Judge, on an examination of the facts, may be safely allowed te prevail up to the limit stated. If any further concession is to be made, and hardly any seems necessary, it should, in Mr. Rivers Thompson's opinion, take the form of a prohlbition of an appeal in suits for arrears of rent from Rs. 50 to Rs. 100 (the limit of the Judge's summary jurisdiction), unless the amount of arrears decreed by the Court of First Instance were previously deposited in Court. It is a common and a not unreal complaint with zamíndárs that their difficulties commence when the decree for arrears has been attained; and to obviate this complaint as far as may be, it might be desirable to limit the right of appeal except under such securities for the final payment of the demand as have been proposed above.

*Conclusion. Lieutenant-Governor's general opinion on the Bill.*

38. In the preceding remarks the Lieutenant-Governor has only touched on the main points of the Bill, postponing matters of detail till the Select Committee meet. He hopes for opportunities from time to time, during the Committee's sessions, to made to it such communications on those points of detail as the progress of the measure may suggest. In bringing his remarks on the present occasion to a close, Mr. Rivers Thompson would again say that, although on some points he has not been able to approve the Bill as drafted, and has felt himself constrained to make suggestions at variance with some of its provisions, he is still bound to repeat that, if modified on those points, the Bill, in his opinion, will be a constitutional and successful effort to remedy abuses which unquestionably exist very widely, and whose continued existence is incompatible with the peace and prosperity of these Provinces.

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## LEGISLATIVE DEPARTMENT.

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The following report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March, 1884:—

We, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the papers noted in the schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commended themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

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## CHAPTER II.

### Classes of Tenants.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyáts at fixed rates are now

treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer. Lastly, it will be seen that tenants of homestead or bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognizing the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove difficulties.

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## CHAPTER III.

### Tenure-holders.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (*3*), which lays down the rules to be followed by the Court in enhancing the rent of a tenure in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the cost and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to patní tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely :—

(*1*) the addition to sub-section (*1*) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear ;

(*2*) the abolition of the additional fee imposed by section 27 (*2*), clause (*b*), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at Rs. 2 where no rent is payable by the tenure-holder [section 15 (2)] ;

(*3*) the addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by a transfer or succession shall not be entitled to recover rent by suit, distraint or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord ; and

(*4*) the amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

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## CHAPTER IV.

### Raiyats holding at fixed Rates.

10. In the matters of transfer and succession we have assimilated the conditions of the settled raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (*a*) those holding under a registered lease or judicially declared title, and (*b*) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy ; but the majority of us were unable to accept this proposal.

## CHAPTER V.

### Occupancy-raiyats.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Mahárájá of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of the chapter to which we desire to draw attention, is the provision in section 27 (*b*) to the effect that where a partition has taken place "since the first day of January, 1853" the parent estate shall, notwithstanding the partition, be regarded as a single-estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in section 26 (definition of settled raiyat) a sub-section (*2*) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for twelve years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (*6*)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (*7*)] to the effect that if he recovers possession of any land under section 96 (as to which see *infra* paragraph 66) he shall be deemed to have continued to be a settled-raiyat notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term khámár as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [section 31, clause (*a*)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer," we have [in section 32 (*4*)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (*5*) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders and other tenure-holders authorized by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it: this section we have omitted.

24. We have also omitted section 57, which conferred the status of a settled-raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by section 26, (*4*).

25. The next division of this chapter, headed "restrictions on sub-letting," is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII, relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

*1st.*—That if the portion of his holding sub-let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (section 37).

*2nd.*—That if a raiyat sub-lets his holding or any part of it the sub-lease shall not be valid for a period exceeding seven years (section 38).

These enactments are qualified by certain provisions, the most important of which are—

*1st.*—That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident or temporary absence from home in certain cases, and

*2nd.*—That when a raiyat is converted into a tenure holder, as above-mentioned, his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat, and thus the position of his landlord will in this respect remain unaffected.

27. These provisions give rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line, difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure-holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a Table-of-Rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41):—

(1).—The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2).—The contract must fix the rent for a term of at least seven years.

(3).—If the enhanced rent exceeds by more than two annas in the rupee (12½ per cent.) the previous rent, the contract must fix the rent for a term of at least fifteen years.

(4).—The registering officer must, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted as follows (section 43) :—

(*a*).—That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*).—That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*).—That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*).—That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An enquiry had shown that an authoritative Table-of-Rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zamíndárs objected to the total elimination of this as a legal ground of enhancement, and, as it was part of the old law, it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price-lists by the Local Government. It should be explained that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price-lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 2 0 *et seq* of Mr. Justice Field's Digest

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (*d*) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.), and that, when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 44 introduced a clause [(*c*)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to ta e into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (*b*)], that in determining the enhancement to be allowed the Court shall have regard to—

(i) the increase in the value of the produce caused by the improvement,
(ii) the cost of the improvement;
(iii) the cost of the cultivation required for utilizing the improvement, and
(iv) the existing rent and the ability of the land to bear a higher rent.

And, in order to avoid perplexing inquiries into matters long past, we have provided [section 46(*a*)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX, and which as will be seen, are so framed as to secure thall all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission

and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (c)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from ten to fifteen years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

(a) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and

(b) that there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the Courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and

(b) the average value of the rent actually received by the landlord during the preceding ten years.

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## CHAPTER VI.

### NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat," should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made five-sixteenths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of a non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected, when he has for the first time been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following (section 59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on

the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

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## CHAPTER VII.

### UNDER-RAIYATS.

48. We have already (*supra* paragraphs 26 and 27) referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats. The chapter now under consideration provides a certain amount of protection to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

And section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

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## CHAPTER VIII.

### GENERAL PROVISIONS AS TO RENT.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to sub-section (*2*) of section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from twenty years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we undertand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid af this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute-book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra* para. 77).

50. In section 66 (*2*), we have omitted the hard-and-fast rule laid down in the corresponding section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the Court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to section 98 of the original Bill.

52. We have in section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorizing a tenant to pay his rent by postal money-order—a mode of payment which we think may in some cases be found convenient.

53. In sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in section 70 (*4*), relaxed the stringency of the corresponding provision [section 100 (*4*) ] of the original Bill by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from Court-fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the Court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the Collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the Magistrate of the District of Sub-Division, such action would be likely to prevent a breach of the peace [section 81 (*2*) ].

58. We have further empowered the Collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court [section 82 (*4*) and (*5*)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the Civil Court in the first instance, as under the original Bill.

59. For section 117 of the original Bill we have substituted a section (set out in the margin) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement of division of the produce.

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

(*4*) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

The penal provision of section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (Section 220.)

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## CHAPTER IX.

### MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

60. We have introduced a new section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent his landlord shall not be entitled to prevent him from making an improvement.

61. We have in section 89 (*3*) empowered the Collector to decide finally any question between an occupancy-raiyat and his landlord—

(*a*) as to the right of the raiyat to make an improvement, and

(*b*) as to whether a particular work is an improvement.

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (92) based on section 80 of the Central Provinces Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also as intimated (*supra* para. 37) introduced a section (91) providing for the registration of improvements made by landlords.

63. Section 129 (*4*) of the Bill as introduced provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself. For this we have substituted a sub-section [section 93 (*4*)] providing that improvements made by a raiyat between the 2nd day of March, 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in section 94 somewhat enlarged the list of matters to be taken into consideration by the Court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation of the conversion of unirrigated into irrigated land" the Court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent."

65. We have re-drafted the section (95) relating to surrender by a tenant, on the lines of section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (*5*) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned and let it to another tenant, we have attempted to meet by the section set out in the margin.

Abandonment

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

67. We have in section 99, which prohibits a landlord from measuring land more than once in ten years without the consent of the tenant or the permission of the Collector, allowed exceptions in the following cases, namely :—

(a) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(b) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(c) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed to be correct until the contrary is shown. This, we think, will render section 138 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X) concerning the record-of-rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure we have added a section (109) empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy-right being retained in the hands of a landlord, his tenants being thus reduced to the position of under-raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28) which we have introduced into the occupancy chapter, and to which we have already referred (*supra* para. 15) ; and for the rest we are of opinion, after giving our best consideration to the views of the Hon'ble Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

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## CHAPTER X.

### Record-of-rights and settlement of rents.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record-of-rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will we think, be met by the new section (112) which admits, subject to certain conditions, of a record-of-rights being framed by Revenue-officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *primâ facie* presumed to be correct, but would be open to be impugned in a Civil Court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the Revenue-officer is to inquire into the dispute according to the regular procedure of a Civil Court, and his decision is to have the force of a decree and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and as proposed in the original Bill will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-tenants and tenure-holders holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of

the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law, which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the Revenue-officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for fifteen years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well known presumption arising from twenty years holding at a fixed rent shall cease to apply.

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## CHAPTER XI.

### Tables-of-rates

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the enquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general Tables-of-Rates applicable to large tracts; but in special tracts the preparation of such tables may still in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the Revenue-officer. In the latter case the Revenue-officer goes on the ground and himself decides all questions at issue. In the former case the Revenue-officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

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## CHAPTER XII.

### Record of proprietor's private lands.

79. In dealing with the difficult question of khámár or zeerat land we have provided two alternative methods of procedure—

(a) that of survey and registration of such land by a Revenue-officer, by order of the Local Government;

(b) that of enquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private land, have

endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

Rules for determination of proprietor's private land.

138. (1) The Revenue-officer shall record as a proprietor's private land -

(a) land which is proved to have been cultivated as khámár, zeerat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village-custom as proprietor's khámár, zeerat, sír, nij, nij-jot, or kamat,

(2). In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd of March, 1883. specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

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## CHAPTER XIII.

### Distraint.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following :—

(a) Section 167 (2) of the original Bill, which made an application for distraint liable to the same Court-fee as a suit for the arrear of rent, has been omitted.

(b) Produce already stored has been exempted from distraint.

(c) The Court is empowered (section 141 (3) and (4) to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(d) It has been made clear (section 147) that crops which admit of being stored are not to be sold standing.

(e) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under section 185 is committed, has been omitted.

(f) On the other hand, express provision has been made in the first section of Chapter XIX for punishing abetment of the offences in question, and it has been made clear (section 158) that a person, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(g) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

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## CHAPTER XIV.

### Judicial procedure.

81. We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

83. For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

84. We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

85. We have further added a section (165) providing that when a defendant in a rent-

suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

86. We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

87. Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.

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## CHAPTER XVI.

### SUMMARY SALE FOR ARREARS.

88. We have, in accordance with what we understand to be the desire of the landlords maintained the provisions of the law relating to the sale of patní tenures substantially intact amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patní tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

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## CHAPTER XVII.

### CONTRACT AND CUSTOM.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (see *e.g.*, paragraphs 29, 30 and 48 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows:—

(*a*) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.

(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).

(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanentí mukarraí leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently-settled estate from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *halhasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provisions regarding them as appears to us to be necessary.

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste-land.

94. Section 213 provides that a raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for twelve continuous years, and that until he acquires the right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *halhasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

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## CHAPTER XVIII.

### LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

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## CHAPTER XIX.

### SUPPLEMENTAL.

98. We have somewhat amplified the provisions of section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which, notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a section (222) to make it clear that, when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

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99. In the course of our discussions various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows :—

(1) Whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.

(2) What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

(3) Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.

The proposal before us was that *ex parte* suits should not be re-tried except upon the defendant depositing the amount decreed, but we were unwilling to adopt this proposal on the information before us and desired that it should be referred for the consideration of the Hon'ble Judges of the High Court.

(4) A somewhat similar suggestion which has been made to us is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. On this suggestion, too, we should be glad to have the opinion of the Judges.

(5) A further point, and on this we desire to have the opinion of the Local Government, is whether the summary sale procedure can be applied to those independent taluqs the revenue of which was settled direct with Government, though the holders pay it through the zamíndár. These tenures apparently find no place in the Government registers and it was proposed that the modified *patní* procedure should be applied to them.

(6) A similar proposal was made to render this procedure applicable to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure-holders We decided to refer this point also to the Local Government.

(7) The necessity for further information respecting the conditions on which bastu or homestead land is held has already been noticed (*supra* para. 4).

(8) We are also anxious to be informed if the saving of customary conditions which we have specifically applied to *utbandi* and *hal-hasili* tenures should be extended to similar tenures under other names, and also if any special saving is necessary in regard to the special tenures under which land is held in the Chittagong division.

(9) Again, we desire to be informed whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy-rights as those in guzashta and gora holdings.

(10) Finally, we desire that the Government of Bengal may be consulted as to the possibility of improving the accuracy of the price-lists which have been published during the past twelve years, and the probable effect of basing a system of enhancement of rent mainly on these prices.

100. The publication ordered by the Council has been made as follows:—

*In English.*

| *Gazette.* | *Date.* |
|---|---|
| *Gazette of India* | 3rd, 10th and 17th March, 1883. |
| *Calcutta Gazette* | 7th, 14th and 21st March, 1883. |

*In the Vernaculars.*

| *Province.* | *Language.* | *Date.* |
|---|---|---|
| Bengal | Bengali | 24th April, 1883. |
| | Hindi | 4th May, 1883. |
| | Uriya | 17th May, 1883. |

101. As we have already intimated, we are of opinion that the Bill as now amended should be republished.

S. C. BAYLEY.
RIVERS THOMPSON.
C. P. ILBERT.
G. H. P. EVANS.
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.
W. W. HUNTER.
H. REYNOLDS.*

I sign this report as a fair statement of the results of the deliberations of the Committee, but as I am opposed to the leading principles of the Bill and to many details, I record a separate dissent.

KRISTODÁS PÁL.

I am against the principles of the Bill *in toto*. I sign this report subject to the conditions mentioned by Hon'ble Raí Kristodás Pál, and only because I believe I am bound to sign it according to the rules.

DARBHANGÁ.*

*The 14th March, 1884.*

## SCHEDULE.

Office memorandum by Officiating Under-Secretary to the Government of India, Revenue and Agricultural Department, No. 484-116 R., dated 1st May, 1883, and enclosures [Papers No. 1].

From Under-Secretary to Government, Bengal, No. 1827-648 L. R., dated 13th July, 1883, and enclosures [Papers No. 2].

From Officiating Secretary to Government, Bengal, No. 1876-669 L. R., dated 18th July, 1883, and enclosures [Papers No. 3].

From Officiating Secretary to Government, Bengal, No 1928-694 L. R., dated 24th July, 1883, and enclosures [Papers No. 4].

From Officiating Secretary to the Government, Bengal, No. 2179-787 L. R., dated 13th August, 1883, and enclosures [Papers No. 5].

From Under-Secretary to Government, Bengal, No. 586 T. R., dated 24th August, 1883, and enclosures [Papers No. 6].

From Under-Secretary to Government, Bengal, No. 686 T. R., dated 3rd September, 1883, and enclosures [Papers No. 7].

Notes by Hon'ble T. M. Gibbon [Papers No. 8].

Memorial of Landholders of Eastern Bengal, dated 14th September, 1883, with notes [Paper No. 9].

From Rájá Promotho Natha Bahádur of Dighapatia, No. 21, dated 20th September, 1883 [Paper No. 10].

From Under-Secretary to Government, Bengal, No. 822 T. R., dated 15th September, 1883, and enclosures [Papers No. 11].

* Subject to reservation on some points.

From Officiating Secretary to Government, Bengal No: 972 T. R., dated 27th September, 1883 [Paper No. 12].
From Under-Secretary to Government, Bengal, No. 1021 T. R., dated 1st October, 1883, and enclosures [Papers No. 13].
From Under-Secretary to Government, Bengal, No. 1083 T. R., dated 7th October, 1883, and enclosures [Papers No. 84].
Office Memorandum by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 964 R., dated 10th October, 1883, and enclosures [Papers No. 15].
From Under-Secretary to Government, Bengal, No. 1117 T. R., dated 10th October, 1883, and enclosures [Papers No. 16].
From Under-Secretary to Government, Bengal, No. 1160 T. R., dated 13th October, 1883, and enclosures [Papers No. 17].
From Bábú Kishori Láll Sarkár, Calcutta, dated 18th October, 1883 [Paper No. 18].
From Under-Secretary to Government, Bengal, No. 1299 T. R., dated 27th October, 1883, and enclosures [Papers No. 19].
From Bábú Kishori Láll Sarkár, Calcutta, dated 3rd November, 1883 [Paper No. 20].
From Under-Secretary to Government, Bengal, No. 2321-837 L. R., dated 10th November, 1883, and enclosure [Papers No. 21].
From Under-Secretary to Government, Bengal, No. 2389-861 L. R., dated 16th November, 1883, and enclosure [Paper No. 22].
From Under-Secretary to Government, Bengal, No. 2395-863 L. R., dated 17th November, 1883, and enclosure [Papers. No. 23].
Memorial from the Committee of the Orissa People's Association, dated 1st November, 1883 [Paper No. 24].
From Bábú Ráj Kissor Mukárjí, Utterpára, dated 10th November, 1883, and enclosure [Papers No. 25].
From Honorary Secretary, Tirhút Landholders Association, No. 11, dated 13th November, 1883, and enclosure [Papers No. 26].
From Bábu Kishori Láll Sarkár, dated 17th November, 1883 [Paper No. 27].
From Secretary, Central Committee of Landholders of Bengal and Bihár, No. 118, dated 27th November, 1883, and enclosures [Papers No. 28].
Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 1064, dated 5th December, 1883, and enclosures [Papers No. 29].
Memorial of certain Zamíndárs, Taluqdárs and Intermediáte Landholders of Sherpur, Maimansingh district, dated 16th November, 1883 [Paper No. 30].
From Under-Secretary to Government, Bengal, No. 2670-954, dated 12th December, 1883, and enclosures [Papers No. 31].
From Secretary, British Indian Association, No. 123, dated 18th December, 1883, and enclosure [Papers No. 32]
From Secretary, Landholders Committee, Rájsháhi, dated December, 1883, and enclosure [Papers No. 33].
Endorsement by Assistant Secretary to Government, Bengal, Legislative Department, No. 2, dated 5th January, 1884, and enclosures [Papers No. 34].
From Under-Secretary to Government, Bengal, No. 2789-1001 L. R., dated 19th December, 1883, and enclosures [Papers No. 35].
From Under-Secretary to Government, Bengal, No. 182-45 L. R., dated 16th January, 1884, and enclosure [Papers No. 36].
Resolutions passed at Meeting of the Talanda Branch Indian Association, held on 16th January, 1884 [Paper No. 37].
From Secretary, Bhágalpur Landholders Association, No. 106, dated 9th January, 1884, and enclosures [Papers No. 38].
From Under-Secretary to Government, Bengal, No. 227-68 L. R., dated 21st January, 1884, and enclosure [Papers No. 39].
From Officiating Secretary to Government, Bengal, No. 540-231 L. R., dated 9th February, 1884, and enclosure [Papers No. 40].
From Honorary Secretary, Tirhút Landholders Association, No. 5, dated 9th February, 1884, and enclosure [Papers No. 41].

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*Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.*

1. Chapter IV of the revised Bill provides that a raiyat holding his land at a fixed rate of rent shall be—

   (*a*) subject to the same provisions with respect to transfer, succession, &c., as a tenure-holder; and

   (*b*) liable to be ejected from his holding on the ground of his having broken the terms of a written contract between him and his landlord on breach of which he is liable to be ejected.

   The occupancy-raiyat claiming to hold his land at a fixed rate of rent is, in respect of his holding, placed in a more advantageous position than the ordinary occupancy-raiyat—

   (*a*) by the landlord being debarred from pre-empting should the raiyat transfer his holding to a third party;

   (*b*) in not being liable to be ejected should he use his land in such a way as to render it unfit for the purposes of his tenancy.

   The majority of the Committee are of opinion that the incidents attached to an occupancy-holding the rent of which is fixed should be different from the incidents attached to an ordinary occupancy-holding: from this I dissent.

   If the landlord is to be allowed the right to pre-empt in the one case, he should be allowed to do so in the other; if the raiyat is to be subject to eviction for rendering his land unfit for the purposes of the tenancy in the one case, he should be liable to be evicted in the other.

   Every argument that can be adduced in favour of its being permitted in the one case would apply equally in the other.

Pre-emption is, I believe, an off-shoot of Muhammadan law; when the right to pre-empt is claimed among Hindús in Bihár, it is governed by custom.

The right to pre-empt under English law is, I believe, embodied in the provisions of this Bill for the first time, and only with the object of affording the landlord the means of protecting himself against persons who might purchase occupancy-rights with the intention of injuring him.

The landlord will be put to as great inconvenience by a hostile purchaser in the one case as he will be in the other; the same with a farm destroyed. It will be as useless to him in the one case as it will be in the other.

The effect of these provisions, coupled with Chapter VIII, will be ruinous to the landlord.

Every time a landlord elects to exercise his right to pre-empt, a title to hold at fixed rates will be set up.

Every time a raiyat transfers his holding as a holding at fixed rates, or a transferee anticipating pre-emption takes measures to evade the law, even though the landlord does not wish to pre-empt, he will be compelled to contest the transfer, for fear his not contesting it at once may be taken as an admission of the transferee's right to hold at fixed rates in perpetuity.

Had the Committee seen its way to accepting my amendments and confined the operation of this chapter to holdings under mukarrarí pattá or raiyats whose rights had been declared by a decree of Court, although the landlords' rights would not have been restored to them in their entirety, the mischievous effects of encouraging persons to attempt to evade the law by setting up the presumption would have been avoided.

2 *Chapter V.—Restrictions on sub-letting.*

In respect to the right mode of treating the subject of sub-letting, I am at variance, nearly on all points, with the majority of the Committee.

I do not think there is any necessity to place restrictions on sub-letting with the sole object of discouraging it.

I believe the conversion of the occupancy-raiyat who sub-lets into a tenure-holder will be detrimental to the best interests of the landlords.

I believe it necessary to bring the system under some control, partly with a view to protect the occupancy-raiyat, but mainly with a view to protect the poorest class of cultivators, the raiyat's raiyats.

The power to sub-let is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer.

It enables the occupancy-raiyat to tide over his temporary embarassments.

It enables the labouring classes, who might not otherwise succeed in securing land to assist in the support of their families, to acquire it.

It is legal, and the practice has hitherto been under no sort of restriction, and under no sort of restrictions will it ever be abandoned.

As long as there exists a class of people craving for the possession of land and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, sub-letting will be practised.

The sub-lessees should be protected, and while there is yet time the system should be brought under some sort of control.

The matter may soon force itself on the attention of the Government in such a way as to make the shirking of the question an impossibility.

3. *Chapter V.—On enhancement.*

Under the provisions of the draft Bill submitted to the Select Committee for report, the landlord might enter into an amicable arrangement with his tenant to receive an enhanced rent up to six annas in the rupee on former rates, provided the enhanced rent did not exceed one-fifth the value of the gross produce of the land in staple crops.

He might enhance under suit, on the grounds that the rate paid for the land was below the prevailing rate in the neighbourhood, on the ground that the productive powers of the land had increased otherwise than through the agency of the tenant, and also on account of a permanent rise in prices, provided the enhanced rents did not exceed one-fifth the value of the produce in staple crops, and provided it should in no instance exceed double the previous rent.

Both in the instance of voluntary enhancement and enhancement under suit, the enhanced rent was to hold good for a term of ten years. Under the Bill as revised by the Select Committee, enhancement under contract is in no instance to exceed four annas in the rupee.

Below two annas or up to two annas it shall hold good for seven years, above two annas for fifteen years.

Judicial enhancement by reason of the holding being held at a rate below the rate prevailing in the neighbourhood may be made up to fifty per cent. increase on the former rate, and on account of a permanent increase in prices up to twenty-five per cent.

In any case decided on its merits, whether enhanced or not, the rate shall hold good for fifteen years.

The one-fifth limit has been abandoned in both instances.

Legal enhancement has, I admit, been made very much easier than it is under the present law; but I humbly submit that the omission of a limit which was admitted on all hands to be unascertainable is not sufficient reason for placing the restrictions on enhancement that the majority of the Committee have thought it necessary to place upon it, either in the way of reducing the limit or increasing the term.

It is to be presumed that tenants with fixity of tenure secured to them will only agree to an enhanced rent out of Court, when they know that the landlord by going to Court might get a very much higher rate decreed.

I do not approve of the policy which drives both landlords and tenants to appeal to a Court of law in matters which they can decide very much better for themselves.

In the matter of voluntary enhancement, it was only necessary to declare that enhancement under contract should be under registered agreement, and that the tenant in agreeing to it acted as a free agent.

If it was necessary to put a limit to the amount, the term should have been left to contract.

The fifteen-year limit being adopted in both instances, the landlord will exact the last farthing of what is due to him: we permit no compromise.

It is but fair to the Committee to say that I was alone in the desire to see the arbitrary limit on enhancement on account of the holding being held at a rate below the rent prevailing in the neighbourhood omitted; but I still think it would have been better to have left the matter to the discretion of the Courts.

The Courts have been given the power to make the enhancement gradual over a period of five years. They should be unfettered on both points.

4. *Chapter VIII—On the right of an occupancy-raiyat to hold at fixed rates.*

*Section* 64 (*1*), *Ditto* (*2*), *Ditto* (*3*), The first allows a raiyat whose rents have not been changed from the time of the Permanent Settlement to hold his land at that rent in perpetuity.

The second allows it to be presumed, until the contrary is proved, that a raiyat who has held his land at one rent for 20 years previous to the introduction of the suit has held it at that rent from the time of the Permanent Settlement.

The third makes the above rule applicable to commuted rents also.

In my notes filed with the rest of the papers on the Bill, I recorded my dissent with the provisions of these sections as they then stood in the Bill; the alterations now made are alterations in form, not in substance.

During our discussions in Committee no arguments were submitted, no attempt was made to justify their being originally embodied in Act X of 1859, none in reply to the assertion that they were an infringement on the terms of the Permanent Settlement, none to induce me to alter the opinion expressed by me in my notes.

The pleas urged for their retention in the present Bill were, that they represented the present law, that no case had been made out to induce the Committee to alter the present law, and that it is more difficult for the raiyat to prove his right to hold at fixed rates, that it is for the landlord to prove how, when and on what terms the raiyat was let into possession of the land.

We urged that the Permanent Settlement and its concomitant Regulations never intended that any class of raiyats other than mukarrarídárs and istimrárdárs should hold their lands at one fixed, unalterable rate in perpetuity.

That it never contemplated the creation of any "privileged" class among occupancy-raiyats.

That Act X of 1859, in creating a privileged class among occupancy-raiyats, trenched upon the proprietary rights of the landlords, and, in securing to the raiyats a right to hold their lands at a fixed rent in perpetuity, it reduced the proprietors to the position of annuitants on their own estates.

In declaring that the presumption shall run from twenty years previous to the introduction of the suit instead of from a fixed date it became a constantly accruing title.

That the privilege being a valuable one, one that it is to the interest of the raiyat to acquire in the future and to the interest of the landlord to prevent his acquiring, it was detrimentary to the best interests of both to retain it in the Bill in its present form; it caused constant friction.

At the same time as I denied the justice of its enactment in Act X of 1859, I admitted that it would be harsh and unjust to cancel rights that had grown up under the operation of the present law.

To obviate all appearance of acting unjustly to raiyats who had secured such rights I proposed that the presumption should run from 20 years previous to the introduction of the Act, instead of, as it now does, 20 years previous to the bringing of the suit. I humbly submit that, had the Committee adopted this suggestion, raiyats who have secured to themselves the right to hold at fixed rates would have been secured in their titles, and the first instalment of justice would have been meted out to the zamíndárs. In a Bill which is admittedly being enacted to define the rights of landlord and tenant in the future, which is being passed to restore to the raiyat rights he is supposed to have been deprived of by the legislation of the past or that he has forfeited by his own

carelessness or by his own acts, it is but fair to the landlord to restore to him anything that the loose legislation of the past may have deprived him of.

If it is found impossible to return to him what he has been deprived of in the past, he should at least be protected in the future.

Under the terms of the Permanent Settlement, only mukarrarídárs and istimrárdárs were allowed to hold at fixed rates; not so occupancy-raiyats.

Previous to Act X of 1859 any person claiming a right to hold at fixed rates or rents was obliged to prove his title to do so from a date 12 years antecedent to the decennial settlement, his title was otherwise not complete; that is to say, his title was not dependent on anything contained in the Permanent Settlement, but on the acts of the zamíndárs themselves previous to the settlement.

At the time of the Permanent Settlement the cultivators of the soil were divided into three classes—mukarrarídárs or tenure-holders, resident raiyats with prescriptive rights of occupancy, and non-resident raiyats or tenants-at-will. Act X of 1859 was the first attempt made during 66 years to give non-resident-raiyats rights of occupancy in the soil; in their case, at any rate, the right to hold at fixed rates cannot be founded on anything contained in the terms of the Permanent Settlement, and the landlord should not be called upon to rebut the presumption: the onus of proving the right should be cast on the raiyat.

At the time of the Permanent Settlement, and previous to Act X of 1859, all raiyats with rights of occupancy were treated alike in the matter of rents—"all" were expected to pay the prevailing rate.

It is difficult to find out from a reference to the published papers relating to the passing of Act X of 1859 what led up to the embodiment of these provisions in that Act.

In the draft Bill published in 1857, it only says "hereditary raiyats holding at fixed rates of rent are entitled to receive pattás at those rates," but no mention is made of the 20 years presumption afterwards embodied in the Act of 1859.

Had the Bill of 1857 not been amended, the onus of proving his right to hold at fixed rates would still have been cast on the raiyat claiming it.

In all the published criticisms on this draft Act, Mr. Sconce alone fully discusses the raiyat's right to hold at fixed rates, but he founds the right upon the higher and more intelligible ground that "the Permanent Settlement was not one-sided—permanent for the landlord and not permanent for the tenant"; but he errs in drawing this inference mainly from the provisions of sections 51 and 60 of Regulation VIII of 1793. On a reference to these sections it will be found that the former refers to taluqs, and from the operation of the latter the Province of Bihár was exempted.

I would submit that, if we are to maintain the present law as against the landlord, simply because it is the present law, we are not justified in going beyond the present law in favour of the raiyat as we have done in many instances.

In reference to the declaration often made that it is easier for the landlord to rebut the presumption than for the raiyat to prove his right, I would only repeat that the persons who make this assertion have no conception of the difficulties in the way of the landlord: that it is easier for any given number of tenants to prove their landlord's handwriting than for the landlord to prove the execution of documents executed by men who could not write; and that all the old Regulations made it compulsory on the landlord to execute a document in favour of the raiyat. None made it compulsory on the raiyat to execute one in favour of the landlord.

The present law provides for cases in which the rent has always been paid in cash; under the present Bill, it is intended to go a step further and apply the rule to commuted rents.

Although I was in the unenviable position of sole dissentient on this point in Committee, I must still beg to be allowed to protest against this clause being made law.

It goes far beyond anything we are justified in enacting, it is equal to allowing every raiyat who formerly held at a grain rent, and now holds at a cash rent, to hold at one fixed, unalterable rent in the future.

Severely as these provisions bear on the landlords under the present law, they will bear ten times more severely on them in the future.

With the interchange of pattás and kabúliyats made no longer necessary, the future is in the hands of the raiyat.

Useful as the powers to be given to the Local Government under the Record-of-rights and Settlement of Rents Chapters may be made in the future, with these provisions unaltered our Courts will be deluged with litigation and the zamíndárs ruined.

Their effect can only be minimized by confining their provisions to rents to be commuted in the future and fixing a date from which the presumption is to count.

Their effect on the transfer and pre-emption clauses I have already noted.

5. *Chapter IX—Sub-division of holding.*

The Bill declares an occupancy-holding shall in the future be transferable, and rightly declares it shall only be transferable as a whole.

A transfer of a portion of a holding is declared void as against the landlord.

The right to transfer has not hitherto been among the legal incidents of an occupancy-holding: the Courts have times out of number declined to give a transferee a right

to hold the land when purchased as against the will of the landlord. In spite of the uncertain tenure of the transferee we see rights of occupancy being sold under voluntary sales and sold under decrees of Court in every district in the province.

In some districts it has become so fixed, it has become so common in spite of its illegality, that the custom now overrides the law.

The prevalence of the custom in spite of its illegality is now forcing the Government to declare it valid.

It is now proposed to legalize the transfer of an entire holding, but to declare it illegal as against a landlord to transfer a portion of a holding.

To legalize the transfer of a portion of a holding would be bad policy—bad for the landlord, worse for the raiyat; but to declare the act of a raiyat void as against the landlord and legal as against himself is to permit a state of things to grow up gradually which will eventually force the Government to interfere and legalize proceedings which they now deprecate.

To allow it to be illegal as against the landlord and legal as against the raiyat will not prevent the raiyat transferring it—it will only depreciate the market-value of the holding.

As the raiyat's necessities arise, he will dispose of his holding piecemeal from the fact of its being invalid against his landlord possibly at one-half of its value.

There are three ways of preventing the raiyat disposing of his holding piecemeal, namely :—

to declare a transfer of a portion of a holding illegal as against both landlord and raiyat;

to allow the landlord to treat the transfer as an abandonment of that portion;

to deem the raiyat to have broken a condition on breach of which he is, under the terms of an agreement between him and his landlord, liable to be ejected.

The last is the most drastic, and the one I advocated.

6. *Chapter X.*

Under this chapter the Local Government may at the request of the landlord, at the request of a large number of raiyats or to avert a dispute, order a settlement to be made of the rents of the whole estate.

Under this chapter as it stands the rent-roll settled or ascertained of the estate must hold good for a period of 15 years after a settlement is made, provided nothing debarred the landlord applying for an enhancement.

(1) It would hold good in cases where the landlord applied for an enhancement, and the enhancement was allowed.

(2) It would apply in cases where his application was disallowed.

(3) It would apply where the landlord had a right to apply and did not.

(4) It would hold good in all cases where the settlement was made at the request of a number of raiyats.

(5) It would either compel the landlord to attempt to enhance the rents of all raiyats who were not parties to the application or to be debarred enhancing for 15 years.

(6) It applies to occupancy and non-occupancy-raiyats equally; it would therefore have this result, that it would at once give every non-occupancy-raiyat occupancy-rights.

(7) It will induce raiyats to demand a settlement in order to acquire rights they are not entitled to. It permits of no compromise.

The period should stand as it stood in the Bill, namely, 10 years.

It should only apply to cases in which the landlord applied for an enhancement or occupancy-raiyats had any dispute in reference to their rent.

A non-occupancy-raiyat should not be afforded the means of acquiring occupancy-rights under its shadow, or a most useful chapter will be turned into an instrument of oppression.

7. *Chapter XV.—Incumbrances.*

The last point on which I would wish to be allowed to record my dissent from the finding of the Committee is one of the utmost importance to the trader and also to the raiyat.

The Bill declares that a tenure, when sold under a decree of Court for arrears of rents, shall first be sold subject to registered incumbrances, but allows an occupancy-holding to be sold free from incumbrances.

The Bill certainly allows a person claiming to hold a lien on an occupancy-holding to protect his interests by paying up the arrears due and thereby to acquire a first mortgage; but this is not sufficient protection.

I do not agree with the Committee in thinking any distinction should be made between tenure-holders and occupancy-holdings.

Raiyats holding at fixed rates being subject to the same provisions as tenure-holders, will encourage litigation.

An attempt will be made to set aside the sales of occupancy-holdings by setting up the presumption to hold at fixed rates after sale.

Whether it will be the duty of the Court, the decree-holder, the debtor or the purchaser to enquire whether it is an ordinary occupancy-holding or an occupancy-holding at fixed rents that is brought to sale, or who will be responsible for any loss should any occur, is not clear.

It was necessary to declare that the incumbrance to be protected was binding on the whole of the holding not only on a portion of it, but nothing more.

In not affording the occupancy-raiyat this protection we injure his credit and force him to pay heavy interest where he might borrow on easier terms.

T. M. GIBBON.

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*Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.*

WHILE I concur generally with the majority of the Select Committee in accepting the provisions of the Bill as now revised, I think it right to add that in some particulars the interests of the tenants do not appear to me to be sufficiently protected. The Bill greatly facilitates the enhancement of rents, especially by the substitution of the simple ground of a rise in prices for the old rule which required proof of an increase in the value of the produce. While this great advantage has been given to the landlords, the check provided by section 75(*d*)* of the original Bill has been taken away, the plea that the rate of rent paid by a raiyat is below the prevailing rate has been retained as a ground of enhancement, and the Bill provides no limitation whatever of the rent which a landlord may demand when a tenant (other than a settled raiyat) is first admitted to the occupation of land. Even in the case of a settled raiyat, the landlord may demand an increase of twenty-five per cent. on the rent previously paid. These sections put into the hands of landlords a powerful engine for enhancing rents up to the maximum amount which a tenant will agree to pay rather than give up the land. For as agricultural holdings must, from time to time, fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry. For this reason, the retention of the prevailing rate as a ground of enhancement appears to me to be fraught with serious danger, and I should be glad to see it eliminated from the Bill.

Similarly, I am of opinion that section 53 of the revised Bill does not sufficiently guard the interests of the tenant in cases in which the landlord applies for a commutation of produce-rents. The section ought to provide, first, that the money-rent shall not in any case exceed the rental at which the holding is entered in the landlord's road-cess returns: and, secondly, that if the commutation is based on the average value of the rent received by the landlord during the preceding ten years, a substantial deduction shall be made from such value in consideration of the whole risk of cultivation being taken by the raiyat. Provision was made for such a deduction in the draft Bill of the Rent Commission, and in the Bill submitted by the Government of Bengal.

The wording of section 96 of the Bill, relating to abandonment, seems to me likely to open the door to serious abuses. When a raiyat has been deprived of his holding under the plea of his having abandoned it, it is of very little use to authorize him to institute a suit for the recovery of possession. If this section is necessary at all, its operation should be confined to holdings in the position of non-occupancy-raiyats. There is not the smallest reason for extending it to occupancy-holdings, as, in these cases, the landlord's rent is completely secured by his power of bringing the holding to sale for arrears.

H. J. REYNOLDS.

*The 17th March, 1884.*

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*Dissent.*

I DISSENT from the report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November, 1883, and concluded their labours on the 13th March, 1884. They first met twice a week, and the members were required to give forty-eight hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 P. M. to 5-30 P. M.; and notices of amendments were required to be sent in to the Secretary the day before the meeting; and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season; but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely ten hours, for the preparation of amendments, and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to repre-

* This clause declared that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time."

sent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, shewed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the Rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee, I doubt not, felt the necessity of this power. At the suggestion of His Honour the Lieutenant-Governor the Committee in an informal way examined some experienced zamíndárs on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zamíndárs has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zamíndár and the raiyat. The middleman of course gains much more than what he has under the existing law, but the *bonâ fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds, firstly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; secondly, because it assumes a construction of the Regulations which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; thirdly, because it does not fulfil the primary object for which it was originally sought, namely, the simplification of the procedure for the settlement and realization of rent; fourthly, because it is calculated to sow dispute and dissension between the landlord and the tenant and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; fifthly, because it will tend to reduce a large proportion of cultivating raiyats into agricultural day-labourers; and sixthly, because, by abolishing the freedom of contract between the landlord and the tenant, and by making the Court and the Revenue-officer the referee and arbitor in all matters of zamíndárí management and raiyatí action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its backbone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year, have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill I do not propose to discuss it chapter by chapter or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

*Tenure-holders.*

In addition to the present class of persons who are recognised as tenure-holders, two other classes have been introduced, namely, (1) occupancy-raiyats who may sub-let more than half their holdings (section 37), and (2) raiyats, the area of whose holdings may exceed 100 standard bíghás, the whole or part of which is sub-let; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (section 5, sub-section 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy-raiyat exempted from his obligations under the Bill as to pre-emption and distraint, and the zamíndár in so far placed in a worse position, because the occupancy-raiyat chooses to sub-let more than half his holding. The conversion of an occupancy-raiyat of a holding, the area of which exceeds 100 bíghás, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain villages, which the occupancy-raiyat does not possess, and for which, generally, a valuable consideration is paid to the zamíndár. For instance, a tenure is not, unfrequently, a permanent holding, heritable and transferable according to conditions of contract, and, under the present Bill, will enjoy favoured rates of rent and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the hundred-bíghá jotedar into a tenure-holder under an edict of the legislature is consistent with the ancient or existing land-law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class.

Then as to enhancement of rent of tenure-holders, section 8 of Regulation V of 1812 contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependant taluqdár, if the rent of the lands be computed according to the rates payable by raiyats or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependant taluq at the rate of 10 per cent., for the taluqdár's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq." This section was repealed by Act X of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collections (*vide Field's Digest*). This case-law has been embodied in the present Bill, but with wide variations.

For instance "customary rate" has been substituted for "prevailing rate," though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent. of the collections, but under the Bill it is to be *not less than* 10 per cent. of the balance which may remain after deducting, not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses but also "risks of collection." I may observe, I am not aware of any revenue-law under which an allowance is made for "risks of collection." Even the zamíndárs are not allowed any percentage for sums irrecoverable from raiyats on account of the Public Works and Road Cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under the existing law the rent of a tenure-holder is liable to to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the Court may direct that the enhancement shall be gradual and payable in five years; under the existing law there is no limit of period as to enhancement of rent, but under the Bill the period is limited to ten years. I allude to the last three provisions to show that while so little consideration has been shown to the zamíndár, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

*Raiyats at fixed rates.*

For the first time a legal presumption was introduced by Act X of 1859 to the effect that if the rent of a raiyat had not been changed for a period of 20 years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the Permanent Settlement. Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The raiyats have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zamíndár. The Hon'ble Mr. Reynolds drew attention to this point in his memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zamíndár," and that, "it bears very hardly upon auction-purchasers who are often unable to get possession of the zamíndári papers of their predecessors." This, Mr. Reynolds observes, is forcibly represented by the Collector of Purniyá, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption." Without entirely abolishing the presumption Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for twenty years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction-purchasers by providing that the presumption shall not be pleaded against them. In making these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859." Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the twenty years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates:

Section 23.—A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which is, eh under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the twenty years' presumption referred to I cannot resist the conviction that it will tempt raiyats, whether entitled to the presumption or not, to declare themselves to be raiyats at fixed rates, and thus defraud the zamíndár of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect raiyats holding from the date of the Permanent Settlement from arbitrary enhancement of

rent by unscrupulous zamíndárs, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy-raiyat into a *mukarrarídár* or permanent tenure-holder. The consequence of this provision to good and bad zamíndárs is also striking. Where a zamíndár from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a raiyat for more than twenty years, the raiyat, who has been careful enough to preserve his rent-receipts will easily prove his case, while a zamíndár, who has shewn no such consideration or leniency, who has not scrupled to trouble and harass the raiyat with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zamíndár will suffer and the bad zamíndár will gain.

*Occupancy-raiyats.*

THE occupancy-raiyat of the modern time is notoriously a creature of Act X of 1859, but I do not wish to revive the controversy on the subject The twelve years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a a zamíndár were so disposed he could defeat the growth of the occupancy-right by shifting the raiyat from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary of State, whilst strongly expressing himself in favour of the present twelve years' rule of continuous possession, has recommended the following modification. He would provide that "every resident raiyat shall have right of occupancy in the land which he occupies and pays rent for, and that a resident-raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for twelve years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for twelve years, should, *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged raiyat. If in any part of the country the zamíndár has sought to nullify the growth of occupancy-right by shifting the raiyat from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitation, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled, that the Right Hon'ble the Secretary of State for India having finally decided the question, they were not competent to re-open it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled raiyat :—

*Section 45.*—Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again :

*Section 47.*—Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat, any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended the theory of the settled raiyat and created a new legal presumption in his favour. Thus :

*Section 25.*—(1) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate;

(2) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

*Section 26.*—(1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate;

(2) If, in any proceeding under this Act, it is proved or admitted that a person holds land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a raiyat.

(3) A person shall be deemed, for the puposes of this section, to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

(4) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(5) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(6) A person shall continue to be a settled raiyat of a village or estate as long as he holds any land as a raiyat in that village or estate and for one year thereafter.

(7) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from twelve years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every raiyat shall be considered a settled raiyat with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident raiyat" as an occupancy-raiyat, but the provisions quoted above do not recognise *residence* as a condition of accrual of occupancy-right. In the second place, the Secretary of State does not refer to pos-

session by two or more co-sharers as a proof of occupancy-right derived by each such co-sharer. In the third place, he does not say that, even if a settled raiyat leaves his holding and pays no rent, he shall be considered a settled raiyat "for one year thereafter." On the contrary, he declares payment of rent as an inalienable condition of the right. And lastly, the Secretary of State nowhere says that if a raiyat once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled raiyat notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and, as a matter of course, are so many encroachments upon the proprietary rights of the zamíndár.

It is observable that while a person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijáradár* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy-holding, the occupancy-right shall cease to exist (section 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zamíndár alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zamíndár.

On this point I venture to draw attention to the following remarks of Mr. H. L. Dampier, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise and to continue to hold certain rights described as occupancy-rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zamíndárs of estates adjoining that within which the land lies; by zamíndárs, resident or absentee, of the estate itself, if the land is included in a tenure; by any non-resident-holders of tenures, whether in the estate itself or in any other estate; by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vasted, is 'the landlord,' that is, by the definition the 'person or number of persons immediately under whom a tenant holds;' or according to the proposal made by the Lieutenant-Governor towards the end of paragraph 14, the 'proprietor or permanent tenure-holder immediately under whom the raiyat holds'." The justice of these remarks is so evident that I need say nothing by way of comment.

*Transfer of occupancy-holding and pre-emption.*

The question of transferability of the occupancy-holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say that the measure will be equally injurious both to the zamíndárs and the raiyats; the former will have a valuable right unjustly taken away from them and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time, be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations nor under Act X of 1859 is an occupancy-holding transferable. When the question of the transferability of the occupancy-holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy-holding in satisfaction of decree for rent, and suggested that, where a zamíndár might adopt this remedy, an occupancy-holding once so sold should be declared to have become a transferable tenure. The Lieutenant-Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February, 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant-Governor has with some reluctance withdrawn the proposal that the occupancy-right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and His Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and raiyat It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor General in Council has expressed serious doubts as to the expediency of including such a provision in the Bill. The Bill, therefore, only proposes to recognize sales of occupancy-tenures at the request of the landlord in execution of decrees of Court, and to this the Lieutenant-Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject, and the concession made by the zamíndárs in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy-holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zamíndárs. As to right of pre-emption accorded to the zamíndár it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamíndár will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and, if he cannot come to an agreement with the raiyat

about the price, he must go through the expensive process of a reference to the Court for arbitrement, and must be prepared to pay the price adjudged by the Court. If the raiyats of a zamíndár in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy-holding may be worked by evil-disposed raiyats to the utter ruin of the zamíndár. It is noteworthy that while the zamíndár will have to go through the expensive process of obtaining the Court's decision as to price, the raiyat shall not be bound by that decision, for section 32, sub-section 4, says that when the zamíndár tenders a price to the raiyat, "the raiyat shall either abstain from selling the land or sell it to the landlord at that price." So the landlord will be entirely at the mercy of the raiyat.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial raiyats, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy-raiyats who may sub-let more than half their holdings, or who may keep holdings of more than hundred bíghás in size part of which is sub-let, are *ipso facto,* converted into tenure-holders.

*Enhancement of rent.*

I have already alluded to the question of the enhancement of the rent of tenure-holders' who are placed at a considerable advantage to the detriment of the zamíndár, a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X of 1859. With regard to the enhancement of the rent of occupancy-raiyats I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zamíndárs in this matter; but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord. In the first place under the existing law there is a perfect freedom of contract between the landlord and the tenant regarding enhancement or rent outside the Court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than four annas in the rupee, that is to say, not more than two annas for a term of at least seven years, and if more than two annas, but not more than four annas in the rupee, for a term of at least fifteen years. Thus a serious disability is imposed upon the landlord in fixing rent outside the Court. When enhancement of rent is sought by suit, the grounds on which the enhancement may be applied for are thus set forth:

(*a*) That the rate of rent paid by the raiyát is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate" is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government. The second ground will, I am afraid, prove fictitious, for knowing as the Committee do, how unreliable are the price-lists prepared by Government officers, they cannot deny that it will be difficult to obtain reliable data for striking average prices, particularly, "in the locality or at the usual markets"—who is to fix the usual markets? The third ground will be made practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional.

The rules providing for enhancement enquiries by the Revenue-officer will practically leave the whole matter to the discretion of the Revenue-officer. For instance, in ascertaining the prevailing rate, the Revenue-officer is directed to make a local enquiry, but he is not told on what principle he is to find the prevailing rate, and the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price-lists, and, I have

already stated, those that are published in the *Calcutta Gazette* by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists—and this remark applies to future lists—they cannot and ought not to be accepted by Courts of Justice as good and valid evidence. The question still recurs—how will the lists of past prices be prepared?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal, and that of Indian corn, barley and wheat in Bihár. The specification of the staple food-crops is left to the discretion of the Local Government, which may from time to time vary them. No allowance is made for valuable crops, such as tobacco, sugarcane, mulberry, potato, jute, &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal; for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement whereas the Bengal money-rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money-rent? As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions, that it will, I fear, prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, section 46 says that the Court shall consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him, will any proprietor with two grains of common sense to rub against one another undertake any improvement?—if he cannot be sure of any return for his money, naturally, he won't lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of ten years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered. It is now declared that, when enhancement is sought on the ground of prevailing-rate, the rent shall not exceed the previous rent by more than eight annas in the rupee or fifty per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rent by more than four annas in the rupee or twenty-five per cent., and that every enhancement shall have a currency of fifteen years. It will be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zamíndárs the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailing rate," common sense suggests that the rent should be raised to the limit of the "prevailing rate"—it is not clear why a maximum limit of fifty per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of twenty-five per cent.

### *Commutation of produce-rents into money-payments.*

This part of the Bill affects Bihár more than Bengal, and as my honourable colleague, His Highness the Mahárájá of Darbhangá, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, namely, (*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and (*b*) the average value of the rent actually received by the landlord during the preceding ten years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

### *Non-occupancy-raiyats.*

Both under the Permanent Settlement Regulations and Act X of 1859 it was left entirely to the discretion of the landlord to deal with the non-occupancy-raiyat, who is none other than the tenant-at-will. But the relations between the landlord and non-occupancy-raiyat are materially altered by this Bill. Nothing will prevent the non-occupancy-raiyat from acquiring the occupancy-right, and, as already observed, he will get the benefit of the legal presumption of a settled raiyat, if he can manage to scatter a few seeds once upon a plot of ground; then when he will be first let in he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed except by registered agreement, and even when an agreement may be tendered by the landlord to the raiyat, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The Court shall then determine what rent is fair and equitable for the holding, and if the raiyat agrees to pay the rent so determined, the landlord, under order of Court, shall be bound to give him a lease for five years, and if before the termination of the lease the raiyat shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of

an occupancy-raiyat. The non-occupancy-raiyat will thus be one in name; the landlord's present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for five years. I should observe that in consequence of the introduction of the judicial lease, the original provisions regarding the compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for five years involves a great injustice to the landlord, who is tied hand and foot by the Court in a matter in which he has always enjoyed perfect independence of action. The raiyat, in whose favour the judicial lease is ordered, may be most obstreperous and turbulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another raiyat, may get better rent and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy-raiyats involved a further invasion of the proprietary rights of the landlord, and that in favor of a class of tenants who are not attached to the soil, and have, therefore, no manner of moral claim upon the consideration of the landlord.

*Sub-letting and sub-raiyats.*

One principal defect of the Bill, as introduced, was that, while it seriously curtailed the rights and privileges of the zamíndár, it did practically little for the good of the *boná-fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors including the Government, as the representative of the public. The position of the middleman had been greatly strengthened, while the sub-raiyats, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realized by the Committee, and they proposed various devices for bettering the position of the sub-raiyats. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy-raiyat sub-lets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy-raiyat sub-lets, his sub-lease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease, the greater his gain. In the third place, the landlord of a sub-raiyat shall not, in the case of a registered lease, be entitled to recover rent more than fifty per cent. of what he himself pays, and in any other case not more than twenty-five per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Bákirganj, where there are thirteen grades of middlemen. Will each middleman have the right to claim from his sub-raiyat fifty per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain—of the men who immediately cultivates? And in the fourth place, a sub-raiyat should not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior raiyat and the sub-raiyat as to whether the former has sub-let more than half his holding, and the result will be either silent suffering on the part of the sub-raiyat or frequent litigation. Then, as far as I can judge, the limitation of rent under section 62 will apply only in such cases in which a superior raiyat may sub-let more than half his holding; he will therefore, studiously keep himself under this limit and thus avoid the clutches to the law. Furthermore, it will be nobody's interest to bring to Court the superior raiyat contravening the law, for no penalty attaches to breach of law. The superior raiyat will make it a point not to let his land to any raiyat who will not accept his own terms, and when a sub-raiyat accepts those terms, he will not seek the benefit of the law; another raiyat, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if he be not admitted by the superior raiyat. So that the new positions restricting sub-letting will either prove a dead-letter or give rise to endless litigation.

*Improvements.*

The chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom. At present improvements are generally made by the landlords, and where they are made by tenants, they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a raiyat holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding, (2) where a raiyat has an occupancy-right he shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord, and (3) where a non-occupancy-raiyat desires that a certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietary right of the landlord, and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the raiyat should be encouraged to make improvements, surely the first option ought to be

given to the landlord to effect them. From an economic point of view, the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose. Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the Court not to allow an enhancement, if the Court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid, will be to throw back all improvements. The soundness of the policy, which expects improvements from those who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

*Management of joint estates.*

The Bill gives power to the District Judge, on the application of the Collector or of any person interested, even a squatter, to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harassment may be caused to raiyats in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, clause (*c*), says that a tenant may deposit rent when the rent is payable to sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf. Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of raiyats who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess, I do not clearly understand it. If, for instance, the co-parceners default in the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public." I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas which have no existence in fact.

*Record-of-rights, settlement of rents, Tables-of-Rates and record of proprietor's private lands.*

The chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far as Bengal is concerned, the rights and interest of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *ámlá*, and throw the agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own lookout, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record-of-rights were confined to those cases in which auction-purchasers at revenue or summary sales may not receive *jamabandí* papers for their guidance, if the settlement of rents were made applicable to those cases in which the raiyats might combine and withhold payment of rent and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards Tables-of-Rates, the enquiries which have been made on the subject have made clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes one hundred and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Pargana* rate in any given area. And yet power is taken by the Local Government to order preparation of Tables-of-Rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record-of-rights and settlement of rents, will be cast upon

the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khámár*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Section 138.—(1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot, or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognised by village custom as proprietor's khámár, zírat, sír, nij, nij-jot, or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

Section 37 of Regulation VIII of 1793 thus describes *khámár* lands:—

Section 37, Regulation VIII of 1793. The above exception [exclusion of lákhiráj lands from the general assessment], however, is not meant to include the *Málikánah* lands in Bihár, or the *nankar*, *khámár*, *nij-jot*, and other private lands of the zamíndárs and independent taluqdárs, or other actual proprietors of land in Bengal and Mednípur, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for twelve continuous years was attached to the zamíndár's *khámár* lands under the old law. As for waste lands, it is notorious that they were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

### *Distraint.*

The law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Bihár, I understand, it is largely resorted to. The essence of the present law of distraint is, that the process is a sharp and quick remedy, and that the whole responsibility rests upon the landlord who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of Court; it is clogged with various restrictions, and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy which the distraint law ought to be, while the expense and harassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead-letter, and thus the only facility which the landlord possesses at present for realising his rent, quickly, will be taken away from him.

### *Judicial Procedure.*

I need not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patní Procedure, (2) the Certificate Procedure now applicable to Government and Wards' Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamíndár or rent-receiver in instituting a suit for arrear of rent should make out a *primâ facie* case by filing necessary papers such as *jama-wásil-báki* papers and counterfoils of receipts and giving necessary evidence.

The Court should then issue summons. In order to obviate the usual complaint of non-service of summons, I would suggest a provision to the following effect:—

"The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant, it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing it at the mál-kachárí of such land, or on the land for which the arrear is due or other conspicuous place thereon, or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukídár, village mandal, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

The order to prevent abuse, of at least two of the abovementioned processes should be observed in every case; and with this safeguard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or retrying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff The defendant should be required to file all documentary proofs and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so; or if the case be contested, it should on that day settle the issues in the presence of both parties and fix another day for hearing and final determination of the suit, not exceeding a fortnight from the date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited. The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say—

For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :—

We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the raiyat in case his disclaimer of the title of his landlord was disproved in Court. The modifications proposed by the Committee would only multiply wheel within wheel, a title-suit in an arrear-suit, and thus vastly delay the realization of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next, they will be able to see their way to an efficacious simplication of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a concensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realize their just dues.

*Freedom of contract.*

Under this Bill, freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25 and 26).
(*b*) The incidents of occupancy-right specified in section 31.
(*c*) The occupancy-raiyats right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

I have, in my remarks on the introduction of the Bill, strongly protested against this retrogade move. The Permanent Settlement Regulations not only recognised but openly encouraged freedom of contract, and Act X of 1859 did the same. I cannot conceive that if the raiyat can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labour and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

*Civil Courts and Revenue-officers.*

The jurisdiction under the Bill is divided between the Civil Court and the Revenue-officer. The large powers which have been conferred upon the Revenue-officer at the instance of the Bengal Government are, I hope, I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead-level system which prevails in Northern India, and

which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce-rents into money-payments, to record-of-rights and settlement of rents, to preparation of tables-of-rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the Revenue-officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object if the Revenue-officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing, I conceive, can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Regulation II of 1793:—

All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats (tenants), have hitherto been cognizable in the Courts of Mál Adálat, or Revenue Courts. The collectors of revenue preside in these Courts as judges and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue-officers must be deprived of their judicial powers. All financial claims of the public when disputed under the Regulations must be subjected to the cognizance of Courts of Judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the powers of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collecting the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the Regulation can be infringed, or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The broad views which were expressed by the Government in 1793 apply with ten-fold force in 1884.

*Patní tenures.*

The zamíndárs, not without reason, object to the incorporation of the Patní law in this Bill. They hold that every word of that law has during the last 65 years received an accepted and authoritative meaning; that it is well understood by the zamíndárs, the Patnídár, the Court and the ámlá; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patní law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patní chapter from this Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meet in November next.

KRISTODÁS PÁL.

*The 14th March, 1884.*

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## *Memorandum of Dissent from the Finding of the Majority of the Select Committee on the proposed Bengal Tenancy Bill.*

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*Principles of the Bill.*

I would base my dissent to this Bill on the broad ground that it does not settle the land law of Bengal on a firmer, juster or more satisfactory basis than it now stands on, and that it will neither keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons, nor tend to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvements; also that while it fails to accomplish the only objects which in Lord Hartington's opinion justified the introduction of such a Bill, it at the same time involves great and entirely novel departures from both the ancient custom and the existing law of Bengal, a course which that very same authority has with the true instinct of statesmanship condemned as unadvisable.

Despatch, 17th August, 1882, paragraph 21.

Despatch, 17th August, 1882, paragraph 9.

I find it difficult to understand what are the principles on which Government proposes to change the present law of landlord and tenant. In the Statement of "Objects and Reasons"

(which it is customary to send to the Members of the Council with every Bill) it is stated that Act X of 1859, though admittedly beneficial, was in some important points so unsuccessful that it had resulted in Bihár in rack-renting of raiyats and oppression by zamíndárs, and in Eastern Bengal in preventing zamíndárs from obtaining enhancements to which they were legally entitled and even in difficulty in recovering their legal rents. From this we may gather that the main objects of the Bill are to protect raiyats on one hand and on the other to facilitate the zamíndárs' collection of legal rents and their making legal enhancements of the same.

If it can be shown that the results of Act X of 1859 have really been such as Mr. Ilbert states (which, however, I would, as far as Bihár is concerned, most emphatically deny, and of which, I would here specially notice, no proof whatever has been shown), then no landlord or raiyat could oppose equitable measures taken to attain what, as I above notice, appear to be the nominal objects of the proposed Bill, nor do I see that in any of their various memorials the zamíndárs have raised the slightest objection on these points.

Had the Bill adhered simply to these objects, all would have been well; but departing altogether from them, clauses of the most revolutionary character, and infringing strictly guaranteed rights have been introduced, which have created a great deal of unrest and mistrust in the minds of the zamíndárs. It is true that the Government of India have never said that they wish to deprive the landlords of their vested rights; on the contrary, they have always declared that they do not wish in any way to trench on the vested rights of landlords that were guaranteed to them at the time of the Permanent Settlement, but the result of the passing of this Bill would be practically to negative such declaration.

No legislation whose object it is to deprive one class of its vested rights (without giving that class any compensation) and to give those rights to another class, has, I think, as yet been passed in India, nor do I think that legislation of this sort is ever likely to be enacted. Some such theories have been advocated by certain advanced thinkers in England, but in India until this Bill appeared no such theories had been heard of, and even in England there is a marked difference of opinion on this point among the most advanced thinkers.

Notwithstanding that the Government of India have, as I before remarked, never officially said that they wish to do away with the Permanent Settlement, and that the Secretary of State in his letter is most distinct in declaring that he is against any legislation that is likely to trench on the vested rights of any class of the community. Notwithstanding this, the proposed Rent Bill has created an amount of ill-feeling and distrust never before excited in India by any Bill affecting the rights of the people, and the cause of such feeling is that, although these professions have been made by Government, still the most of the clauses of the proposed Bill are revolutionary and are directly against the principles on which we are supposed to legislate. The feeling to which I allude has of late been greatly aggravated and intensified by a memorandum that was published by the Government of Bengal on 5th January, 1884. I quote below a passage from this memorandum, and the principles contained in it are, I would suggest, quite enough to create distrust and ill-feeling in the mind of everybody interested in the Bill. The passage runs thus :—

> "The Lieutenant-Governor then thought that, while it was well * * * * * to have history on one's side, yet the decision of the question turned more on appeals to the requirements of the present * * * * * than on historical researches. He therefore paid more attention to the practical character of the proposals made in the Bill than to their historical justification."

Apparently overlooking the fact that our rights as zamíndárs have been clearly defined and legislatively recorded at the time of the Permanent Settlement, the Lieutenant-Governor here implies that our rights, and I suppose the raiyats' rights too, are but indistinct in the haze of historical research, and that in consequence alleged present wants affecting those rights should be met by measures, framed not in accordance with the past guarantees of the Government of India, but in the light of views held by a present Local Government. On this ground, he has, it would seem, been biased by views formed with regard to what some consider to be present necessities, and has disregarded the zamíndárs' vested rights.

We the zamíndárs on the other hand hold that we are one of the classes most interested in this Bill, and that our rights naturally should not only be fully enquired into but protected.

It may be thought, though I do not for one moment admit it, that the landlords' rights are prejudicial to the interests of the people at large. If so, the matter ought boldly to be faced, and landlords be allowed "compensation for disturbance" and ordered to surrender their rights. But it is hardly fair to the zamíndárs that the letter of the Government of Bengal of September last (which it now seems did not exhaustively enter into the question of the landlords' rights, and which had great weight with the deliberations of the Select Committee) should ever have been put forward before that Committee as the result of an impartial enquiry, and that the able minute of the Chief Justice which fully entered into the legal aspects of the question should not have been published with the other official papers.

The zamíndárs as a body have objected to the Bill ever since it came out of the hands of the Rent Commission. Meetings were held in almost every district of Bihár and Bengal, and in all these meetings the revolutionary clauses were condemned, and it was the general opinion that the Bill was a wanton interference with the existing customs and the ancient land law of the country. Rájá Siva Prasad in Council in March last correctly described what are the feelings of the landed proprietors, when he said that, "if such a Bill passes, it will shake the faith and confidence of the people."

Under this head I would only add that the general principles of this Bill, *viz.*, the proposal to invest occupancy-raiyats with these rights in all fresh lands on the very day that such lands are settled with them, the restrictions that are for the first time proposed to be placed on the right of free contract in favour of the raiyats without giving any reciprocal advantage to the zamíndár, and limit of 25 per cent. enhancement that is also for the first time proposed to be placed in a Bill, one of the primary objects of which is to give the landlord further facilities for the enhancement of his rents, can but be looked upon by the zamíndárs as not only a wanton digression from the recognized laws and customs of the country, but as a confiscation of their vested rights. The Bengal and Bihár zamíndárs have as a class been the most loyal of Her Majesty's subjects in India and trusting in the known good faith of the English Government they have always believed that no Government of India would wish or think of depriving them of their vested rights or of turning a deaf ear to their representations.

Under these circumstances the zamíndárs are naturally alarmed at the publication of such an official memorandum by the Bengal Government as that I have above quoted from, one which leads them to believe that the Government of Bengal has not thought fit to make a full enquiry into their rights before committing itself to the opinions expressed in its letter of September last.

I would ask what have the zamíndárs done to deserve this treatment? Are they really as rapacious and unscrupulous as the Government of Bengal thinks them to be? If so, where are the facts to show it? Have we got any statistics to show that it is the general custom in Bengal for the zamíndárs to change the lands of the tenants every twelfth year? Are there any statistics to show that the treatment of the non-occupancy-raiyats is so very oppressive as to justify the introduction of such an idea as compensation for disturbances in our legislature, an idea which is entirely novel to the people of the country, and which was not even dreamt of by the ancient law-givers? Is there in fact any proof that rack-renting and oppression in Bihár is so common, as to call for the destruction of the proprietary rights?

A great number of official opinions have been published, but few or no statistics to show that the conduct of the zamíndárs is really so oppressive as described in the above-mentioned letter of the Bengal Government. Further I would ask, is there any ancient law to show that according to ancient custom the raiyats had occupancy-rights in all the village lands, and that the zamíndár had no proprietary rights in any lands except those that he cultivated himself?

I would now at more length record under different headings those points in connection with the proposed Bill as it left the hands of the Select Committee which lead me to dissent from it.

### *The Permanent Settlement.*

Throughout the whole of the discussion of the Rent Bill it has always been officially declared that it is not the object of the Government to infringe on any of the rights that were guaranteed to the zamíndárs or raiyats at the time of the permanent settlement. On this point, therefore, the zamíndárs, the raiyats, and the Government are all at one. The question now to be decided is, what were these rights? On this point, however, there is a great difference of opinion, though I for one cannot make out how there can possibly be any difference of opinion on a well-defined question of this sort. The wording of the permanent settlement regulations is most clear, and they distinctly declare the zamíndárs to be the actual "proprietors of the soil" and not mere rent-receivers, as some people seem to imagine.

There are others who go beyond this, and hold that the zamíndárs as a class did not exist before the time of the permanent settlement, and that before this period they were mere collectors of rent for the Government. In answer to these, I enclose for publication translations of two* firmans granted by the Muhammadan Emperors to two of the oldest families in Bihár; one of these was granted to the family of Bhojepur or Doomraon, and the other to the family of Darbhangá; and these clearly show that at least some of the zamíndárí families of Bihár were in existence not only before the time of the permanent settlement, but even before the establishment of the English Government in any part of India.

As regards the rights conferred on the zamíndárs by the permanent settlement, I cannot do better than quote a passage from the regulation itself. It runs thus:—

"The Governor General in Council declares to the zamíndárs, independent taluqdárs, and *other actual proprietors of land*, that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor General trusts that the proprietors of land sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves *in the cultivation of their lands* under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent taluqdárs and raiyats, are duties at all times indispensably required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."

Sir John Shore in one of his minutes writes thus:—

"I consider the zamíndárs as proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign cannot justly exercise the power of depriving them of the succession nor of altering it when there are any legal heirs; the privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Dewany."

* One firman has not been received from the Hon'ble the Maharaja.

These are the opinions of Lord Cornwallis and Sir John Shore, the actual framers of the Permanent Settlement, and both of them are emphatic in declaring the zamíndárs to be the "proprietors of the soil." These opinions, moreover, were endorsed by no less a personage than Pitt. Mr. Dundas, the President of the Board of Control, in a letter to Lord Cornwallis says:—

"I thought it indispensably necessary that the measure should originate with the Board of Control, and likewise that I should induce Mr. Pitt to become my partner in the final consideration of so important and controverted a measure. He accordingly agreed to shut himself up with me for ten days at Wimbledon and attend to that business only. Charles Grant stayed with us a great part of the time. After a most minute and attentive consideration of the whole subject, I had the satisfaction to find Mr. Pitt entirely of the same opinion with us. We therefore settled a despatch upon the ideas we had framed, and sent it down to the Court of Directors."

As regards the rights of the raiyats, I might simply mention that the rights that are now proposed to be given to them are very different from those that they enjoyed at the time of the Permanent Settlement. In fact, they had properly speaking no proprietary rights in the land at all. They could not transfer their holdings, nor is there anything in the regulations to show that the raiyats had the right to hold on at fixed rates without the consent of the zamíndár. There is besides nothing to show that the rate of rent was regulated by the value of rice, wheat, and some other cheap food crops, which, according to a late declaration of the Secretary of the Bengal Government, are the only "staple crops." I would here quote a passage from Sir John Shore on this subject:—

"It is, however, generally understood that the raiyats by long occupancy acquire a right of possession to the soil, and are not subject to be removed; but this right does not *authorise them to sell or mortgage it, and it is so far distinct from a right of property.* This like all other rights under a despotic Government is precarious. The zamíndárs, when an increase has been forced upon them, have exercised the right of demanding it from the raiyats. If we admit the property of the soil to be solely vested in the zamíndárs, we must exclude any acknowledgment of such rights in favour of the raiyats, except where they may acquire it from the proprietor.

"In every district throughout Bengal, where the license of exaction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bíghá; some lands produce two crops a year, some three; *the more profitable articles, such as mulberry plant, betel-leaf, tobacco, and sugarcane, render the value of the land proportionably great.* These rates must have been fixed upon a measurement of the land, and the settlement of Turymul may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with each succeeding measurement. When a measurement of the land takes place, the existing rates are confirmed and generally with some addition."

In this passage the definition of staple crops is not limited to rice and wheat and the other cheap food crops; on the other hand, it shows that in those days the value of the more valuable kinds of produce like tobacco and mulberry was taken into consideration.

Before concluding this subject I quote a passage from another high authority who lived immediately after the Permanent Settlement. I refer to Lord Metcalfe, who, as is well known, was no admirer of the Permanent Settlement, as is evident from the passage I quote below, but he also is of the opinion that the zamíndárs were vested with the proprietary rights in the soil by the Permanent Settlement:—

"I need not say that I am no advocate for the regulation proprietors of our creation. I consider their creation to have been an enormous error, which has not been attended by any benefit whatever; but having created them, and declared them to be proprietors, we gave them, I conceive, after the reservation of the Government revenue, all the rights of property that it was in our power to give, that is, all the rights that did not previously belong to others. We had no right to destroy the pre-existing property of others, in order to confer it on our new fangled proprietors; we could not legally or justly give them a single field which previously belonged to others; but we could and did give them the right of the Government in every field in their zamíndárí, and we superadded the full property in lands, not owned or occupied on a permanent tenure by others. Having done so, although we have a right, and are bound to protect the ancient cultivating proprietors and occupants in all their rights, whatever they were, and ought to be ashamed of ourselves for not having done so, we have no right to step in, between our proprietor and the cultivator of his own planting, on lands declared to be his own property, with a view to destroy the engagement which they have mutually entered into, and prescribe others of our own fashioning * * * * * * I would let the regulation proprietor have all his just rights. It could never have been intended when we created proprietors that they were to be merely entitled to a percentage on the revenue. It was meant that they should be really proprietors, which they are and ought to be, in every case in which that would not affect the previous rights of others, but as we had no power, that is, no lawful power, to take away the rights of others, we have not given them one jot of those rights, and are bound to maintain the ancient proprietors and holders of permanent rights against those of our own creation."

In a disputed legal question of this sort, it would have been well if the opinions of the Hight Court Justices, the Advocate General, and the other law officers of the Government, and some of the leading lawyers of the country have been consulted. But in this mater, as in the matter of statistics, I find a remarkable want of information among the official papers that have been published. One of the zamíndár's chief stand-points is the Permanent Settlement, and on this point it was most necessary that the Select Committee should have the best legal opinions procurable. No such opinions have, however, been consulted.

### *Chapter III of Bill—Tenure-holders.*

Tenure-holders represent but one portion of the proprietary interest in land, as distinguished from the raiyatí interest. I do not see any special necessity for legislating on the present occasion for tenure-holders, properly so called. Their rights are pretty well ascertained, and as a class they at least are quite able to look after their own interests. I could understand the formal reproduction of the provisions of Act VIII of 1869, B.C., with respect to tenures and under-tenures, but I fail to perceive sufficient reason or justification for changes in the substantive law in this respect. In my opinion, the whole of Chapter III should be recast,

the provisions of Regulation VIII of 1819 retained in their integrity, and the relevant provisions of the Bengal Council Act VIII of 1869 simply reproduced.

The injustice of substantive changes is very much enhanced by the direct and indirect promotion of certain occupancy-raiyats (*viz.*, those who sublet and those who possess more than 100 bighás) to the status of tenure-holders, as explained at length by my hon'ble colleague.

*Chapter IV of Bill—Raiyats holding at fixed rates.*

Whatever might have been the necessity felt by the zamíndárs for facilities in the collection of arrears of rent since the imposition of new Government cesses on lands, and however urgent the necessity felt by a certain class of landlords in Bengal proper for increased facilities as to enhancement of rents, I may say that the zamíndárs of Bengal and Bihár are entirely at one that they would much rather put up with existing inconveniences and hardships, than accept the gift of the proposed legislation. If however the law is to be changed, it is but fair and just that the novel provisions of Act X of 1859, which are admitted by the highest authorities to have worked wrongful loss to the zamíndárs, should be modified or repealed. The presumption arising in the tenants' favour from 20 years' holding at an uniform rate of rent may be said now to have worked out its object, as every tenant who cared for it, has had an opportunity for the last 25 years to insist upon the granting of receipts and to take care for their preservation. Such being the case, apart from any other facts, it would have been proper to extend the period of uniform payment which should give rise to the presumption. But the necessity for such a change is rendered more urgent by the fact that in its existing shape it works positive and unmerited loss to the zamíndár The Hon'ble Rai Bahádur has in his dissent already called attention to the recorded opinions of the Hon'ble Mr. Reynolds in his memorandum, dated the 18th May, 1881. The same opinions have been recorded by Mr. Dampier, Senior Member of the Board of Revenue and President of the Rent Commission, in his note dated the 19th May, 1881, and although the Hon'ble Mr. Reynolds thought fit to change his mind, the arguments which were advanced by himself and by Mr Dampier have not been refuted. Mr. Dampier condemns the retention of the presumption section not only on the ground already advanced by the Hon'ble Mr. Reynolds, that the real effect of such a statutory presumption has been not conservative but productive, creating "in the vast majority of instances new rights, instead of merely establishing those which already exist, but for the support of which full proof is not attainable," but also on the further ground of public policy that "the presumption amounts practically to a declaration that when an estate passes to a purchaser from a hostile vendor at a forced sale, in the majority of which cases, no zamíndárí papers are available to the purchaser, every tenant who has held without change of rents for 20 years shall acquire the right of permanent occupancy at a fixed rent." Mr. Dampier adds a further argument on the ground of public policy, that such a provision drives the landlords to institute enhancement suits every 20 years, "lest their rights should pass away *sub silentis*."

*Vide* Sections 3 and 4, Act X of 1859

Report of the Government of Bengal on the proposed amendment of the law of Landlord and Tenant in that Province, Vol. I, pp. 181-182.

Ditto, Vol. II, p. 460.

*Chapter V of Bill—Occupancy-raiyats.*

In approaching this subject we must bear in mind the great distinction between the actual cultivator and the middleman. Whatever increases the prosperity of the agriculturist conduces to the prosperity of the nation, but the middleman whose prosperity is dependant on what he can squeeze out of the cultivator, is a useless member of society, who simply adds to the difficulties of the situation. Whatever tenderness is shown by the ancient custom of the country or the "official literature" of byegone generations, is limited to the cultivators of the soil and not to those who having gone into occupation of land for agricultural purposes, set themselves up as microscopic proprietors displaying within their limited spheres the quintessence of all the possible vices and abuses of the zamíndárí system. If there is to be a radical change in the law, this is a class of men who ought to be excised from our agricultural system, as they are the greatest hindrance towards the rise of that "substantial peasantry able to withstand the vicissitudes of seasons" which it is desired to bring into existence. I am quite willing to recognize the necessity of allowing the validity of sub-letting in certain special cases, but beyond that limit I would not go. In all cases where the occupation of land was allowed for agricultural purposes, I would insist upon the right of occupancy being made conditional upon the *bonâ-fide* cultivation of the land by the tenant himself, or by hired labour, and I would not allow the transfer to any other than a resident cultivator. Two of my amendments proposed in Committee embraced this question. The one allowing the sub-letting of an entire holding in case of females, minors, &c., was adopted, but the other which would restrict the transfer to *bonâ-fide* resident cultivators was not carried.

It is a well established fact, that sub-letting has brought ruin upon the cultivator; and that middlemen have the most to answer with respect to the embarrassment of the agricultural situation, and that a raiyat holding direct under the zamíndár is in a much better position than the *korfa* or *kalait* raiyat. In the face of this, it is simply a wanton aggravation of existing difficulties to raise occupancy-raiyats *en masse* to the status of tenure-holders and rent-receivers, and to afford facilities to other than cultivators to acquire by occupation

A good sample will be found at pp. VIII, IX, 355-60 of the first Vol. of an avowedly anti-zamíndárí compilation entitled "The zamíndárí Settlement of Bengal" quoting from various official and non-official utterances

or otherwise the right of occupancy. Taking for granted that the raiyat requires protection from the arbitrary act of zamíndárs who purposely shift them from land to land to prevent their acquiring a right of occupancy in any one given bit of land (a practice which I contend has not been proved), the Select Committee would create a presumption in the raiyat's favour (*viz.*, that because they now hold land they *must* have held that land for 12 years)—a presumption opposed in itself to the actual state of things in the agricultural population, as occupancy of land is daily changing, owing to causes over which the zamíndár has no control. This presumption ignores the circumstances that there are vast areas of riparian land in these provinces, which are constantly the subject of alluvion and diluvion; that throughout the border lands of these provinces there is still in force an active process of reclamation from jungle; that in the interior districts the pressure of population upon the soil has led and is daily leading to the encroachment of cultivation upon waste and pasture lands; that the existence is notorious of a large number of *paikasht* cultivators, who try their chances all round without being attached to any particular locality; and that there are numerous cases in which old raiyats voluntarily relinquish their jotes owing to a diminution of the productive qualities of the soil, and other sufficient reasons. Taking all these circumstances into consideration, can it be said that a fair and reasonable judge, in the absence of any other evidence whatsoever affecting the probabilities of the case, could, from the mere fact of a tenant's holding a plot of land to-day, deduce, or much less feel himself bound to deduce, that the same tenant must have occupied the whole or at least a part of the same plot for the last 12 years?

With reference to the proposed presumption that all raiyats have occupancy-rights, I would here cité a few instances where I think it will be simply impossible for the zamíndár or thiccadar, though the raiyats have not got occupancy-rights, to rebut such a presumption.

*1st.*—In those cases where the landlord acquires possession by buying up the property at an enforced sale for Government revenue, the defaulting zamíndár, whose property is thus bought up, is naturally in the majority of such cases hostile to the man who has bought it, and so refuses, to give up the papers of passed years. How is a zamíndár in such cases to rebut the presumption.

*2nd.*—Where one estate is let out to two or more patnídars or thiccadars, how is a patnídar in such cases to rebut the presumption that the raiyat has not been holding lands in the other patní or thicca lands of the estate.

This leads me to protest against the proposal to invest an occupancy-raiyat (though his holding may be only one yard in area) with occupancy-rights in all fresh lands he takes up, on the very same day that such lands are settled with him. Because a raiyat can cultivate a small piece of land, that is no reason why he should be able to cultivate large bits of land. He may take them simply to sub-let or sell it.

Then, too, the word 'estate' is most vague. An estate might mean a small bit of land, or it might mean large tracts of the country. The word 'village' would be more convenient. It has a well-defined boundary and it represents a specific area.

### *Transfer and pre-emption of occupancy-rights.*

It is abundantly clear, that by the ancient land law of the country no raiyat, resident or non-resident, had the power to sell or mortgage his raiyatí interest.* The Legislature and the Judges have respected this by holding that the right of occupancy is not transferable against the will of the landlord, except by custom. The contention on the part of the Government seems to be, that, as a matter of fact, the custom has grown everywhere, but the statistics to which appeal is made are not really to the point, as they do not show in how many cases the zamíndár was a consenting party before or after the transfer.

* "It is generally understood, that the raiyats by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right *does not authorize them to sell or mortgage it.*"
Mr. Shore's Minute of 28th June, 1789; III, Harrington's Analysis, page 434.

A custom of this kind would be so notorious that there ought not to be the slightest difficulty in proving it in a Court of Justice to the satisfaction of all classes and interests, and I maintain that the wholesale introduction of transferability is uncalled for in the absence (1st) of specific and proper evidence to show that it is universally recognized; and (2nd) of any particular instances of failure of justice in the Civil Courts from the inability of purchasers to establish a really existing and flourishing custom. Such a wholesale extension of occupancy-rights, as is now contemplated, must be detrimental to both proprietor and village community alike, as it takes from the former the power of keeping on his land those peaceful and friendly raiyats whom it is his interest to retain, and opens the door for them to be ousted by mahájans or hostile zamíndárs, who can buy up their rights, and settling a different class on their lands, bring quarrels, litigation and ruin into a village.

I would suggest that the old custom of the country, by which such holdings were not transferable, was one specially tending to the security and well being of the village community, as it prevented to a great extent those who had no interest in it forcing their way therein and by setting up interest opposed to those of the community at large, and of their proprietors, ruining the village peace and prosperity.

In support of this theory I would point to the disastrous consequence attendant on right of transfer having been recognized among the Dekkhan raiyats, and also to the disturbance among the Sonthals, due mainly to the oppression of the mahájans into whose hands they had fallen; and I desire to protest against the raiyats on my own and other zamíndáries being as a

natural result, if this Bill is passed, made over to the tender mercies of mahájans and other land speculators.

It is true that compensation for the introduction of the new right of transfer is offered to the proprietor in a proposed right of pre-emption, but why, I would ask, should the proprietor be forced to buy what is already his own? The proposed restricted right of pre-emption will be but small relief to the proprietor, and I would suggest that if allowed at all it should be made far more effective by its extension to every transfer of a raiyatí right (except by way of inheritence), and if the same right could be extended to the case of "tenures" as well a self-acting machinery would be provided for the extinction of middlemen's interests, much to the good of all parties concerned. *I would much sooner prefer free sale to bonâ fide resident cultivators*, than the right of sale to any one and every one, subject to a phantom right of pre-emption. It is supposed that the transferability of occupancy-rights would be of benefit to indigo planters in Bihár, but I know many such who are opposed to the proposal, and the Bengal planters as a class are entirely opposed to the same.

*Commutation of rents.*

In considering this question I would notice first, that Bhowli or rent payment in kind is not the custom in my own estates, nor do I consider that in those parts it would be as advantageous to either proprietor or cultivator as money payment of rent. But there are parts of Bihár peculiarly circumstanced, where Bhowli is the custom, and money payment the exception; and suddenly to introduce so complete a change as is contemplated under this heading, would, I think, press very heavily on all classes. This is a matter which may fairly be left to time, the experience of past generation shewing that, with the gradual increase of prosperity and civilisation, payments of rent in kind have a tendency to change into money payments, and I would deprecate such a change being suddenly forced on.

Personally this question does not much affect me; but as the representative of the Bihár zamíndárs, I would here record their opinions, and that I think they are worthy of consideration.

The practice of paying rents in kind was no doubt the original method for paying rents, and its retention in parts of Bihár is due to its manifold advantages in the present condition of the people, as well as to the known desire of the people of this country to stick to old customs. Akbar's great Híndú financier Todur Mul had fixed the rent of the raiyat at ⅓ of the gross produce. Aurungzebe had increased this to ½ (one half); and the zamíndárs, taking into consideration the difficulty of the appraisement of the price of the straw, have fixed the share at $\frac{9}{16}$ths (nine-sixteenths) of the produce of the crops, and giving to the raiyats the whole value of the straw.

Where the agricultural community has no other occupation to fall back upon, it is distinctly an advantage to the cultivator, that however small the produce of his field in a season of scarcity, he should retain a part of it; on the other hand, a tenant who is bound to pay a uniform money rent, finds that in many cases the value of his whole crop is not equal to the landlord's fixed money demand. Viewed in this light, the cultivator who pays rent in kind is much better prepared to meet scarcity, than the tenant who pays money rent.

As an example of what I mean take a year in which crops have totally failed, the Bhowli-holder is liable for nothing to his landlord that year as he has no crop to share with him, but the money rent payer is liable for his full year's rent irrespective of the failure of his crop, and may be driven either to borrow at ruinous rates of interest at a time when his credit is peculiarly low, or to pay the costs and interest of a suit by the landlord. The provision for commutation of rents in kind is therefore held to be undesirable as rendering the agricultural population more liable to suffer in times of scarcity and famine.

Even in ordinary times (as the demand for rent generally coincides with the harvest), tenants paying rents in cash have in some cases, though the cases may be rare, to part with their grain at very low prices. The Bhowli tenant, on the contrary, has no such sacrifice to make.

Then, again, in large tracts of alluvial formation, when a single season may make an immense difference in the productive qualities of the soil (either for good or for evil) zamíndárs and raiyats find the Bhowli system to be that most convenient and equitable for settling rents.

Further, in a Bhowli system of settlement, the landlord every year gets the benefit of sharing with the tenant any increase in the productive powers of the soil, or in the area, or in the value of the produce; and if there is any decrease, the loss is shared by both the parties. There is therefore much less cause for any of the parties to be discontented, and then there is much less occasion for the landlords to institute suits for enhancement.

So much for the commutation itself. As to the manner of working it out, the revenue-officer is to be empowered to fix the money rents, and the Bill provides that in settling such rates, he should be guided by the rate of money rents prevalent in the neighbourhood, and the average value of the rent actually received by the landlord for the last 10 years. These rules are but vague; and as we know that, as a fact, different officers take very different views on all such matters, I do not think that a question of such vital importance should be left to a revenue-officer to decide according to his own individual opinion, and that such a matter is one that can only be decided satisfactorily by mutual agreement or private contract between the landlord and his tenant. It it also argued on the side of the zamíndárs that it is more profitable to the landlord to get the share of the produce in kind, than to get a money rent, because (unlike the raiyat) he can afford to keep back his grain from the market at harvest time, and sell it to

better advantage at a time of the year when the price of the grains is dear. This commutation therefore would amount in practice to a reduction of the income of the zamíndárs, which I do not suppose is the real intention of the Government.

I hope shortly to send in some statistical information regarding this, which I have not as yet had time to complete. There is another point in connection with this which is worthy of notice in the raiyat's interest, *viz.*, that where the Bhowli system holds, the zamíndár alone at his own cost keeps up the necessary dhoor bandhs for irrigation purposes, and no cost in connection with this, although they directly benefit by it, falls on the raiyats. Whereas where rent is payable in money, if the zamíndár improves the productive powers of the land by irrigation works, the raiyat is liable to have his rents enhanced, and according to local custom is expected to share the cost of keeping existing bandhs, &c., in repair with his zamíndár.

*Enhancement.*

About this subject, as on the subject of realization of rents, it is thought advisable that the zamíndár should get further facilities. The present law allows enhancement of the rate of rent through the Civil Court on three grounds only, the most important being, that the value of the produce, or of the productive power of the land, has been increased, otherwise than at the expense or by the agency of the raiyat, and everybody must admit that this principle is very fair, but it has been found in practice that it is most difficult to prove the "increase" in court of law, and so enhancement through the Law Courts is almost at a dead lock. The zamíndár therefore finds it easier and less expensive to enhance his rents by private contract, but even this is by no means at all easy to accomplish owing to the unwillingness of the raiyats to pay any enhancement which they think is not obtainable through the Civil Court.

However, since Government has begun to publish the weekly price-lists of food-crops in each district in the Gazette, we have better statistics to show the rise in prices. I therefore consider the proposal to make these price-lists the conclusive evidence of a rise in the prices a very good one, and by doing this the zamíndárs will no doubt get a certain amount of relief. I would however propose that the general wording of the present law should be retained and that the ground of enhancement should not be restricted, as is now proposed.

There are cases where the value of lands improves through other causes than those contemplated in this Bill; such cases might be rare and perhaps difficult to prove, but that is no reason why their existence should not be provided for.

The definition of "staple-crops" in connection with enhancement, should not, I think, be limited to cheap food-crops only.

All the old regulations are unanimous in declaring that the zamíndárs should enjoy the benefit of a change in the crops in the country. Sir John Shore mentions this to have been the custom before the Permanent Settlement. At the present time, too, not only the produce of the food-crops, but sugarcane, tobacco, betel, and various other crops also are appraised in those parts of the country where the rent is received in kind, and in the other districts we find a marked degree of difference in the rate of rents between those lands that grow cheap food-crops and those that grow the more valuable crops.

This provision therefore is a "novel departure from the ancient law and the recognized customs of the country."

I see no necessity for any such additions being made to the old law which left it to the Court to give a "fair and equitable rate of rent" in all disputed cases, nor do I see the necessity for limiting the rate of enhancement. The enquiries which the Civil Court would have to make in each case would put that Court in the best position to know what rate of enhancement would be fair and equitable, and there seems no sufficient reason for curtailing its power, and preventing its giving a higher enhancement than 4 annas in the rupee, even though it might be satisfied that a higher rate would be fair and equitable.

As regards the private enhancements, I fail to see the justice of doing away with free contract in this case. It is no easy thing for a landlord to get any enhancement by a private arrangement, and it is most undesirable that any loophole should be left for future dispute in such cases, and that the raiyat should at the time of the registration of his kabuliyats have the opportunity to contest his liability under the contract which he has already signed.

*Chapter IX of Bill—Management of Joint Estates.*

I gather from paragraph 97 of the Statement of Objects and Reasons appended to the original Bill introduced in Council, and from the extracts referred to therein, that there exists an impression that the provisions for the appointment of managers for joint owners are much needed; and that the proposed legislation in that respect is necessitated by the repeal, in 1874, of certain portions of Regulation V of 1827, which has made the present law, Regulation V of 1812, section 26, unworkable. The old Regulations gave the power to the Government to appoint managers for properties, where there are joint proprietors, and where the conduct of these joint proprietors caused an apprehension of a breach of the peace. These Regulations, however, were passed long before the enactment of the Criminal Procedure Code, according to which a breach of the peace was made a grave criminal offence. It was therefore found no longer necessary to make breach of the peace a civil as well as a criminal offence. The repeal of these Regulations in 1874 was therefore on the footing of obsolete enactments, and, consequently, there is every reason, before reviving such procedure, to enquire how far the Regulations of 1812 and 1827 were actually resorted to by public officers or private complainants, and with

what success. I put a definite question to this effect in Committee, but the only reply I obtained was that the information would be looked after; and to this day I have heard no more about it. In my humble opinion when such a law has solemnly been repealed as obsolete, the proposal for its revival ought to be preceded by the collection and publication of statistics. Neither theories nor mere general impressions should precede proposals for legislation. Facts, well established and clearly arranged, can alone justify them.

I cannot leave this subject without remarking that with the progress of education and the spread of levelling ideas a purely patriarchal form of Government is no longer needed for the benefit of the raiyats. If these provisions, therefore, are to be re-introduced, the proprietors of estates and tenures, and even the novel tenure-holders created by this Bill, could but view with dislike the proposal which leaves the entire management of their properties in the hands of the District Judge *without any right of appeal.* Is there less chance of a Judge giving a wrong decision in such cases that his order in them is to be final, or is the possible enquiry which may be caused by his order likely to be less than in the many other cases which as Judge he has to decide, but in which the law refuses finality to his judgment, and provides for an appeal to the High Court?

While on this subject, I might mention that I proposed certain restrictions to be put on the management charges and the powers of the managers; I further proposed that the management charges should, on no account, be more than 12 per cent. of the gross income of the estate; and that in making this suggestion I was justified by the fact that in some cases the management charges under Government in the Court of Wards has exceeded even 20 per cent. of the gross income.

"The rate varied from division to division, having been as high as 25 per cent. in Rájsháhi and Kúch Bihár where a thorough reorganisation of the system of management is urgently called for, and is now in progress), and as low as 5·1 per cent. in Orissa."—(Administration Report of Bengal, 1879-80, pages 44 and 45.)

Besides this, I made a proposal to the effect that no managers should be appointed on the ground of breach of the peace, unless all or at least one of the proprietors apply for a manager. I made this proposal, as I thought that unless we put some restrictions of this sort we are bound to see all the raiyats apply for joint managers in all 'ijmali' estates and in all cases where they have instituted criminal proceedings for breach of the peace, simply to annoy the zamíndárs, and have failed. The Criminal Codes can more effectually treat this question than Civil Courts, as the powers vested in the Criminal Courts for the prevention of breaches of the peace are much more effective than those with which the Civil Courts are now proposed to be vested.

There was a third proposal which I made to the Select Committee, which was, that the managers should on no account be allowed to have the power of lowering rents without the consent of all the joint proprietors. I naturally think (and I moreover believe that everybody who has studied the subject at all carefully, or has any experience in the management of landed estates, and is besides not committed to official opinions on the subject, will agree with me in thinking) that the manager, who after all has only a temporary interest in the village, and who is supervised by a Government officer, whose other duties do not allow of his giving sufficient time to such supervision, would, according to the proposed Bill, have splendid opportunities of robbing the zamíndárs of their yearly income by reducing the rents of the raiyats, and filling his own pocket by taking a commission from the said raiyats as bribe for such reduction. What is the class from which the Government can, in such cases, recruit their staff of managers? Looking to the pay of such appointments, it can only be much the same class from which they now recruit their Ameens and Police Inspectors, who, as is notorious, are one of the greatest curses of the country. The Government cannot possibly hope to recruit their managers from the higher class of native gentry, on account of the small salaries such appointments are likely to command. The incomes of the ordinary joint proprietors are, as a rule, very small; and moreover in these days of heavy criminal penalties for "breaches of the peace" it is not likely that Government will be able to appoint one manager for a large number of estates, and so, by ensuring his getting a sufficiently large amount of monthly salary, secure the appointment of a trustworthy man.

To all the proposals about restrictions on the power of the managers and the expenses of their establishment (which, in the opinions of the zamíndárs I have consulted, seems strictly necessary) I got the answer in Select Committee that the High Court are to be asked to frame rules. But we, the zamíndárs, maintain that the functions of the managers should not be left undefined, but that the legislature should clearly define them. If it is really thought that the High Court knows more of this subject than the Legislative Council, then why is it that the High Court was not consulted on the very much more important questions concerning the legal rights of zamíndárs guaranteed to them by the Permanent Settlement.

### *Chapter XII of Bill—Record of Rights.*

It has been alleged that in some estates the zamíndárs do not keep up any proper records. If so, then in such zamíndárí survey and proper record of rights might be necessary; but this is no reason why in those estates where the records are perfect, and where those concerned are contented with the records they have got, the raiyat and the zamíndár should be put to the trouble of a survey.

All the zamíndárs measure their estates periodically according to the old system of measurement, and they have all some sort of rough measurement papers, and there are some who even go beyond this and have their estates not only measured, but mapped out very much in the

same way as is done in the estates of the Government. Their papers show the exact area and position of the raiyats' holdings, as well as the quality of the land and rates of rent payable.

There are a few zamíndárs who go even beyond this and induce all their raiyats to sign the record-book after fully explaining to each of them the particulars of his field, &c. This is no easy task for the zamíndár. He has not, like the Settlement Officer of the Government in its khas mahále, the power to compel the attendance of the raiyats, hence he has to incur a great deal of expense, and the consequent trouble is immense.

Under these circumstances, can it be said that it is necessary to have a general survey; at least those zamíndáris where the records are perfect should, I think, be exempted.

I propose that if there is to be a survey it should be taken in hand in only those villages where the raiyats or zamíndárs wish it, as I do not see the justice of saddling them with the expenses of a survey which they do not wish for, and which, instead of doing good, is calculated to give rise to endless litigation.

In 1876 a law was passed compelling the zamíndárs to register their rights. We all know the amount of litigation this gave rise to. People who had no claims whatever came forward in the hope of getting some sort of claim recognised, and the result is that though eight years have elapsed since this Act was passed, many of the cases under it are still undecided, and many of the landlords who really have the best possible title to their properties, in addition to the attendant anxiety, have been unnecessarily put to a great deal of expense.

So much for the record of the rights of the zamíndárs who do not represent even one per cent. of the population.

If the period of eight years has been found insufficient to record the rights of such a small class of the people, will it not take ten times as long to record the rights of the tenants who represent nearly the whole population of Bengal and Bihár, and will not the litigation expense, worry, and agitation during this long period consequent on the necessary enquiries be injurious to all classes?

These are reasons which lead me to think that it is unnecessary to introduce the survey in any village except where those concerned request the Government to do it.

*Record of Zamíndár's Khámár or private lands.*

This subject has been dealt with so very ably in the dissent by my hon'ble colleague Raí Kristo Dás Pál Bahádúr that I need not add anything more than that I fully agree with all he has said about it.

*Chapter XIII of Bill—Distraint and Realization of Rents.*

It has been admitted on all sides that the zamíndárs need some more speedy and certain means for realization of rent than they now enjoy, and that the present law is quite inoperative in those cases where all the tenants combine not to pay rents. Such a high authority as Sir James Caird recognises the difficulties of the zamíndárs in those estates where the "no rent" cry is once raised, and even in the Bengal Government's memorandum of January last this difficulty is in a way admitted.

We zamíndárs had therefore naturally hoped that with this object we would be given some increased facilities for realization of rent. In this, however, we have been greatly disappointed, and this Bill, if passed as it now stands, would leave us in this respect in a worse position than we now are, as, instead of providing a summary and inexpensive method for the collection of our legal rents, it practically does away with distraint—the one only sure, equitable, and inexpensive procees now allowed to us.

The present law provides that in those cases where the raiyats fall into arrears the zamíndár can by his own agency serve them with notices stating the particulars of their arrears and then at once distrain their crops. This is the only system possible in those parts of the country that lie on the frontier where a large portion of the tenants are not even British subjects, and therefore able to evade the jurisdiction of the British Civil Courts, and also in those vast tracts like the Cosi dearah in the Purneah District which are inhabited by a semi-nomadic class of tenants who seldom stop in the same locality for more than one harvest.

Even a day's delay in such cases is fatal. The crops, if the raiyats refuse to pay their rent, must be distrained as soon as they are ripe, and the raiyats should not have sufficient time to cut them without paying in their rents, as they leave the village for good directly they have gathered the harvest.

The Bill, however, proposes that in future the landlords must in every such case apply to the Civil Court, and that the crops should be only attached through that Court, thereby giving to the raiyat ample time to cut and carry off his crop before the Court officers can reach the spot to distrain it. Such a procedure not only throws extra and new costs on the zamíndár on account of Court-fees and legal agency which must be employed, but it will result in the landlord having no power whatever to realise his rents from those semi-nomadic raiyats who leave the village directly after they have cut their crops. His only remedy will now lie in a civil suit against a raiyat of whose whereabouts even he may be ignorant, and to execute a decree against whom, if he succeeds in obtaining one, will be almost impossible.

I would specially record that it appears to me to be very strange that a Bill, one of the avowed objects of which was to give to landlords what is admittedly so necessary, *viz.*, some increased facilities for the realisation of their rents, should leave the hands of the Select Committee in such a form that instead of doing this, it intensifies their present difficulties and deprives them of the little relief they now enjoy.

It is the proprietors who are responsible for payment of their share of the Government revenue, which they have to collect from their raiyats, and it is not the Government revenue only that they have to realise; they have also of late been made to collect from their raiyats their share of certain Government cesses, and if by sunset of the day fixed for payment of the Government revenue they have not paid in their Government dues, they are liable to be summarily sold up, and turned out of their properties, and yet they are not to be given any means by which they can ensure their raiyats paying to them what they are bound under such a heavy penalty to pay in to the Government to a day.

The practical working of the law as it now stands is this, that a proprietor may be sold up and ejected from his ancestral property owing to no fault of his own, but to his inability to recover his legal rents from his raiyats—an inability due to a defect in our existing laws—a defect which, as I above show, the proposed Bill aggravates.

I do not for a moment wish to dispute the justice or necessity of the law that makes it possible for large estates to be sold up for trifling arrears of Government revenue, but what I do wish to point out is that it seems to zamíndárs a want of justice on the part of Government to reserve to itself this power of summary sale, while it refuses any summary powers to the landlord for the collection of his rents from his raiyats.

The Government itself recognizes the inutility of trusting to the Civil Courts only for the realization of rents, by having peculiar laws of its own in its own estates or "Khas Maháls," and if necessary for Government, surely such rules are equally so for us. I do most earnestly hope that this matter will be seriously looked into before any final conclusion on it is arrived at, as it is one which gravely affects the majority of the Bihár zamíndárs.

*Chapter XVII.—Freedom of Contract.*

I wish to enter my strong protest against the abolition of freedom of contract between zamíndárs and their raiyats and to the contemplated annulment of contract now existing, and entered into in confidence of the good faith of Government, by whom such contracts were specially legalised and thereby encouraged.

I would urge that no evidence has been shown of the alleged evils arising out of these contracts, or that zamíndárs have, by an improper use of them, injured an unsuspecting peasantry; and that until the most conclusive proof can be given that such evils have become common, no such violent breach of existing arrangement fairly arrived at by mutual consent and sanctioned by Government should be allowed.

The proposed legislation on this point seems to start with the assumption that all contracts between a zamíndár and raiyat must be prejudicial to the latter—an assumption utterly incorrect, as there are many cases in which a contract is directly to the advantage of the raiyat who benefits by complying with his landlord's wishes; to such contracts there could be no possible objection, and yet these also will now be barred.

Finally, I would desire to record, that I object strongly to the conclusions of this Select Committee, because I am of opinion that in such a momentous question we have not had any sufficient data from which to form a fair judgment.

We should have had clear evidence given to us of the existence of those alleged causes, which not only necessitate so extreme a measure as a breach of Government guarantee and infringement of a proprietary right, but which call for a law avowedly so imperfect that the legal member of Government, in introducing it, has to admit that it is in itself likely to cause the extinction of the present class of cultivators for whose benefit it is specially passed; and to create in a few years a new class of cultivators unprotected by any law, and to leave the then Government of India to plunge the country once more into agitation and trouble in attempting to remedy the evils created by this Bill.

I would urge that if a Bill is now necessary to define and regulate the relations of landlord and tenant, it should be conceived in such a spirit and so framed that instead of creating future difficulties, it should set this subject at rest for ever.

I am also of opinion that it was impossible to give the proposed Bill proper consideration in Select Committee without evidence being taken on most of its points; and that this not having been done, and proper statistical information not having been given to and tested by us, our deliberations were unsatisfactory, and that the results arrived at are based on very insufficient data.

DÁRBHANGÁ.

*1st April 1884.*

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*Translation of the Firman.*

Seal.

Be it known to all the amils of the present and future and to the Jágírdárs, karoríous officers and Nazims of Sooba Bihár, that in accordance with the order of the Emperor who

is universally obeyed, the long-standing zamíndárí of Pargana Dharmpur in Sirkar Monghyr and Dehat Pargana of Sirkar Tirhut belonging to the said Sooba Bihár, has been confirmed to Rájá Madho Singh with appertaining rights, *viz.*, inam rasooms, &c. It is necessary that the officers and karpardazes of the Nizamat should recognize the aforesaid Rájá (whose zámíndárí having descended to him by succession is declared as such) to be the permanent zamíndár (subject to loyalty), keep him in possession of the zamíndárí rights, cause his all demands to be paid up, act according to his advice if the same be loyal and tending to benefit the raiyats. Further also, act in accordance with this Firman, which is high in dignity, they should strictly act up to the orders contained in the above Firman and refrain from calling upon the production of the renewed sanad annually.

Dated the 29th Shawal of the 42nd year of accession.

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## No. II.

## THE BENGAL TENANCY BILL, 1884.

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# No. II.

*Explanation of abbreviations in margin.*

D. means Mr. Field's Digest.
C. B., the Bill prepared by the Commission.
B B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.
Section means the corresponding section of the Bill as introduced in March, 1883.

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*A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.*

Whereas it is expedient to amend and consolidate certain enactments relating to the Law

of Landlord and Tenant with the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title.

1. (*1*) This Act may be called the Bengal Tenancy Act, 1884. Section 1 (*1*).

Commencement.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf. Section 1 (*2*).

Local extent.

(*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa. [C.B., s. 1. B.B., s. 1.] Section 1 (*3*).

Repeal.

2. (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. [C.B., s. 2. B.B., s. 2] Section 2.

(*2*) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context:—

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district: [D., § 1 C.B., s. 3. B.B., s. 3.] Section 3 (*1*).

Provided that the registration of a tenure under section 3 (*2*) (*c*) of the Land Registration Act, 1876, shall not constitute it an estate within the meaning of this definition. VI of 1876 (B.C.)

(*2*) "Proprietor" means a person or a number of persons owning an estate. [D., § 1. C.B., s. 3. B.B., s. 3.] Section 3 (*2*).

(*3*) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person. Section 3 (*8*).

(*4*) "Landlord" means a person or a number of persons immediately under whom a tenant holds. Section 3 (*9*).

(*5*) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant. [D., § 1. C.B., s. 3. B.B., s. 3. See s. 227.] Section 3 (*10*).

(*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery." Section 3 (*11*).

(*7*) "Holding" means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions. Section 3 (*13*).

(*8*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and where any other year prevails for agricultural purposes, that year. Section 3 (*14*).

(*9*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793. [D., §§20 & 37. C.B., ss. 6 & 16. B.B., ss. 6 & 15.] Section 3 (*15*).

(*10*) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift. Section 3 (*16*).

(*11*) "Succession" includes both intestate and testamentary succession. Section 3 (*17*).

(*12*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to. [C.B., s. 1. B.B., s. 3] Section 3 (*19*).

(*13*) "Prescribed" means prescribed by the Local Government by notification in the official Gazette. Section 3 (*20*).

(*14*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act. Section 3 (*21*).

(*15*) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision. Section 3 (*22*).

[D., § 26 C.B., ss. 14 & 15 B.B., ss. 13 & 14] Section 36

(16) "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatní and other similar tenures referred to in that schedule.

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## CHAPTER II.

### CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely :—

(1) Tenure-holders including under-tenure-holders,

(2) Raiyats, and

Section 3 (6)

(3) Under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely :—

(a) raiyats holding at fixed rates, which expression includes raiyats holding either at a fixed rent or at a fixed rate of rent,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Section 3 (4).

Meaning of tenure-holder and raiyat.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

[D., § 1. C.B., s. 3. B.B., s. 3. ("raiyat" and "land.")] Section 3 (5).

(2) "Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

(a) local custom;

(b) the provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and

(c) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(5) Where the area of a holding exceeds 100 standard bíghás, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

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## CHAPTER III.

### TENURE-HOLDERS.

*Enhancement of rent.*

*Enhancement of rent* [D., § 19 C.B., s. 7 B.B., s. 7.] Section 18.

Tenure held since Permanent Settlement liable to enhancement only in certain cases

6. (1) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(2) A reduction of rent granted to a tenure-holder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section.

[D., § 21. C.B., ss. 9 & 12. B.B., ss. 9 & 10.] Section 21.

Limits of enhancement of rent of tenures.

7. (1) Where the rent of the tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting the rents, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land

comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest;

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest; and

(*c*) the cost and risks of collection.

(*4*) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid

Enhanced rent not to be more than double the previous rent.

8. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable. [C.B., s.10(*a*) B. B., s. 11(*a*).] Section 22.

Power to order gradual enhancement.

9. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached. [C. B., s. 10(*b*). B. B., s. 11(B).] Section 23.

Rent once enhanced may not be altered for ten years.

10. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the ten years next following the date on which it has been so enhanced. [C. B., s. 10(*b*). B. B., s. 11(*c*) ] Section 24.

*Other incidents of tenures.*

*Other incidents of tenures.*

Transfer and transmission of permanent tenures.

11. Every permanent tenure shall, subject to the provisions of this Act in respect of registration, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property. [C. B., s. 13. B. B., ss. 13 & 17.] Section 25.

Permanent tenure-holder not liable to ejectment.

12. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected. Section 26.

*Patní tenures.*

*Patní tenures.*

Power of patnídár to sub-let.

13. The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof. [D., § 26. C. B., s. 14. B. B., s. 13.] Section 37 (*2*).

Right of landlord of patní tenure to demand security from transferees.

14. (*1*) When a patní tenure is transferred, whether voluntarily, or by sale in execution of a decree, or by summary sale under this Act, the landlord may require the transferee to furnish substantial security to the amount of one half-year's rent of the tenure, for the payment of the rent and the fulfilment of the conditions of the tenure. [D, § 27. C. B., s. 53 (*a*). B. B., s. 45 (*a*).] Section 38.

(*2*) In the case of a transfer by sale in execution of a decree, or by summary sale, if security is demanded by the landlord from the purchaser under this section and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished. [D., § 29. C. B., s. 53(*b*). B. B., s. 45 (*b*).] Section 40(*1*).

(*3*) While an attachment under this section continues, the landlord may collect the rents from the under-tenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser. Section 40(*2*).

(*4*) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same. Section 40(*3*).

(*5*) If the security tendered under this section by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application. [D., § 28. C. B., s 53(*b*). B. B., s. 45 (*c*).] Section 41 (*1*).

(*6*) No appeal shall lie from any order under this section. Section 41 (*2*).

*Registration.*

*Registration.*

Registration of voluntary transfers and successions.

15. (*1*) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession to such a tenure, takes place, the landlord shall, subject, in the case of a patní tenure, to the provisons of the last foregoing section, register the same on the joint application of the transferor and transferee, or on the application of the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed: [D., § 25. C. B, s. 46. B. B., s. 37.] Section 27 (*1*).

Provided that a landlord may, if he thinks fit, refuse to register a transfer of a tenure if any arrear of rent is due thereon.

[D., s. 27. C. B., ss. 47, 49. B. B., ss. 39, 41.] Section 27(2).

(2) The fee payable on an application under this section shall be as follows, namely :—

(a) when rent is payable in respect of the tenure a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

Section 27(3).

(3) If a landlord refuses to comply with any application under this section, he shall deliver to the applicant a statement in writing of the reasons for his refusal, and if he fails to do so the applicant may institute a suit to recover from him such sum by way of penalty not exceeding one hundred rupees as the Court thinks fit.

[C. B., ss. 47, 48(c). B. B., ss. 39, 40 (c).] Section 29(1). *XIV of 1882.

Registration of transfer by sale in execution of decree other than decree for rent.

16. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure,* require the purchaser to pay into Court the registration fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 22.

Section 29(2).

(2) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall, in the absence of sufficient cause, forthwith comply with the requisition.

Section 30.

Registration of transfer by sale in execution of decree for rent or by summary sale.

17. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under this Act, the landlord shall register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

[D., s. 10 C. B., ss. 46, 48 (a), 49. B. B., ss. 37, 40 (a) and 41.] Section 31.

Effect of omission to register.

18. (1) When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree for arrears of rent or by summary sale under this Act) has taken place, the landlord may, until the transfer has been registered under this chapter, hold the transferor and transferee jointly and severally liable for arrears of rent accruing after the transfer.

(2) A person becoming entitled to a permanent tenure by transfer or succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure until the transfer or succession has been registered under this chapter, or a notice thereof has been served on the landlord in manner directed by rules under section 22.

[C. B., s. 35. B. B., s. 44.] Section 32(1).

Application to Court to compel landlord to register.

19. (1) If a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to the Civil Court to compel such registration.

Section 32(2).

(2) The Court thereupon may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

Section 32(3).

(3) If sufficient cause as aforesaid is not so shown, the Court may make an order directing the landlord to register the transfer or succession, and the making of such an order shall have the same effect as if the transfer or succession had been registered.

(4) If sufficient cause as aforesaid is shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

[C.B., ss. 50 and 51. B. B., ss. 42 and 43.] Section 33(1).

Application by landlord to compel registration.

20. (1) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to the Civil Court to authorize the registration of the transfer or succession and to compel the parties to the transfer, or the person succeeding, as the case may be, to pay the fee mentioned in section 15.

Section 33(2).

(2) The Court may thereupon issue a notice, calling on the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why the registration should not be made and why they or he should not pay the fee.

Section 33(3).

(3) If sufficient cause as aforesaid is not so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee. The making of such an order shall have the same effect as if the transfer or succession had been registered, and the order so made shall, so far as it directs the recovery of the fee, have the force of a decree in a suit.

(4) If sufficient cause as aforesaid is so shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

[C. B., s. 54. B. B., s. 46.] Section 34.

Landlord to give copies of entries in the register.

21. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive

from the landlord as many copies as he may from time to time demand of the entry in the register relating to the tenure, certified by the landlord as a true copy: provided that for every copy so received he shall pay to the landlord such fee, not less than *one anna* or more than *one rupee*, as the Local Government may from time to time fix in this behalf.

Power to make rules regarding registration.

22. (*1*) The Local Government may, from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and generally the procedure to be followed in regard to registration. [C. B., s. 45. B. B., s. 46.] Section 35 (*1*).

(*2*) In making any rule under sub-section (*1*) the Local Government may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees. Section 35(*2*).

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## CHAPTER IV.

### RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

23. A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected. [C. B., s. 13. B.B., ss. 12 & 17.] Section 26.

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## CHAPTER V.

### OCCUPANCY-RAIYATS.

*General.*

*General.*

Continuance of existing occupancy-rights.

24. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land. [B. B., s. 19 (1) & Expl. IV (*e*), proviso] Section 44.

Settled raiyats to have occupancy-rights.

25. (*1*) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate. Section 47.

(*2*) Every person who, being a settled raiyat of a village or estate held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force. Section 47.

Definition of settled raiyat.

26. (*1*) Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate. Section 45 (*1*).

(*2*) If, in any proceeding under this Act, it is proved or admitted that a person holds land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a raiyat.

(*3*) A person shall be deemed for the purposes of this section to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times. Section 45 (*1*).

(*4*) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(*5*) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer. Section 45(*2*).

(*6*) A person shall continue to be a settled raiyat of a village or estate as long as he holds any land as a raiyat in that village or estate and for one year thereafter. Section 45 (*3*).

(*7*) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year. Section 46.

Definition of village and estate.

27. For the purpose of the foregoing sections of this chapter— [B. B., s. 19, Expl. II] Section 43.

(*a*) Village means an area included in a village map of the revenue-survey within the same exterior boundary, including such outlying portions (if any) as appear from the map to belong to the village, or where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*b*) Where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of this Act, but since the *first day of January, 1853*, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate.

Section 56.

Effect of acquisition of occupancy-right by landlord.

28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person.

Special provisions as to joint owners and farmers

29. (*1*) A person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder.

[D., § 40, Expls. I & V. C. B., s. 19, Expl. IV. B. B., s 19, Expl. IV (*d*).] Section 47, proviso.

(*2*) A person holding as an ijárádár or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm.

[D., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*). B B, s. 19, Expl III (*b*), Expl. IV (*f*).] Section 49.

Saving as to khámár land.

30. Nothing in this Chapter shall confer a right of occupancy in a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bíhár as zírat, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Incidents of occupancy-right.

31. Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

[B B, s. 69] Section 50, cl. (*a*)

(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[C. B., s. 77. B. B., s. 69.] Section 50, cl. (*b*).

(*b*) He may make improvements on the land as by this Act provided.

[D., § 42. B. B., s. 21 (*d*).] Section 50, cl. (*c*).

(*c*) He shall pay rent at fair and equitable rates.

[C. B., s. 20 (*e*). B B, ss. 21 (*e*), 31, 69 (*a*)] Section 50, cl. (*d*).

(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

(*i*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*ii*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*e*) He may surrender his holding in accordance with this Act.

[C B., s. 20 (*a*),(*b*) and (*d*). B. B., s 21 (*a*) and (*b*).] Section 50, cl. (*f*).

(*f*) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

[D., § 40, note

(*g*) He may, subject to the provisions of this Act, sub-let his land or any part thereof.

B B., s. 71] Section 50, cl. (*e*)

[D, § 41, note 9 C B., s. 20 (*c*). B B., s. 21 (*c*)] Section 50, cl (*g*)

(*h*) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

*Restriction on transfer.*

*Restrictions on transfer.*

Landlord's right of pre-emption on voluntary sale of occupancy-right.

32. (*1*) The right of a raiyat to sell his occupancy-right shall be subject to a right of pre-emption on the part of his landlord.

Section 51 (*1*)

(*2*) For the purpose of enabling the landlord to exercise his right of pre-emption, the raiyat shall, if he intends to sell his occupancy-right to any person other than the landlord, file in the office of such Court or officer as the Local Government may appoint in this behalf, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, the terms on which he intends to sell, and the incumbrances, if any, to which the right is subject, and shall defer proceeding with the sale until the expiration of six weeks from the date on which he files the notice.

(3) The Court or officer in whose office the notice is filed shall forthwith cause it to be served on the landlord in such manner as the Local Government may, from time to time, by rule direct. Section 51 (2).

(4) The landlord may, within the period of six weeks from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of six weeks; and if the landlord so claims and, within one month from the date on which a price is agreed on or fixed by the Court, tenders that price to the raiyat, the raiyat shall either abstain from selling the land, or sell it to the landlord at that price. Section 51 (3).

(5) If a raiyat sells his occupancy-right to any person other than the landlord without having filed the notice required by this section, or within the period of six weeks from the date of the notice being filed, the sale shall be void as against the landlord. Section 51 (4).

(6) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring a Civil Court to associate with itself for the purpose of fixing the price of an occupancy-right under this section such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Landlord's right of pre-emption on sale in execution.

33. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord. [Act XIV of 1882, s. 310] Section 52.

Landlord's right to take the place of mortgagee on foreclosure.

34. (1) Where an occupancy-right has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice. Section 53 (1). IV of 1882.

(2) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord. Section 53 (2).

(3) An order absolute passed under sub-section (2) shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit. Section 53 (3).

Restrictions on gifts of occupancy-right.

35. (1) A gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument. Section 54 (1).

(2) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

(3) When any such gift has been registered, the registering officer shall forthwith serve notice of the registration on the landlord. Section 54 (2).

(4) In the case of gifts made by Muhammadans, nothing in this section shall apply to a gift to a person within the prohibited degrees.

Meaning of landlord for purposes of foregoing sections.

36. For the purpose of the last four foregoing sections the term landlord shall mean exclusively either—

(a) a proprietor under whom immediately the land is held by the raiyat;

(b) a permanent tenure-holder under whom immediately the land is held by the raiyat; or

(c) any other tenure-holder under whom immediately the land is held by the raiyat, provided that such tenure-holder holds immediately under the proprietor or a permanent tenure-holder and is authorized in writing by the proprietor or permanent tenure-holder, as the case may be, to exercise the rights of a landlord for the purposes of the said sections.

*Restrictions on sub-letting.*

Conversion of sub-letting occupancy-raiyats into tenure-holders.

37. If the portion of this holding sub-let by an occupancy-raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Provided as follows:—

(a) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service or a pilgrimage and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability.

(b) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat.

*Explanation.*—A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat.

Restrictions on term of sub-lease.

38. If an occupancy-raiyat sub-lets his holding or any part thereof, the sub-lease shall not be valid for a term exceeding seven years.

Provided as follows :—

(*a*) Where a raiyat is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, nothing in this section shall prevent him or be deemed to have prevented him from sub-letting his holding or any part thereof for a term not exceeding the duration of his disability ;

(*b*) In the case of a sub-lease granted before the commencement of this Act the term of *seven* years shall for the purposes of this section be computed from the commencement of this Act.

*Enhancement of rent.*

*Enhancement of rent.*

[ D , § 42. B. B., s. 21 (*d*). ] Section 58.

Presumption as to fair and equitable rent.

39. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

B. B., s. 21. (*d*). ] Section 60.

Restriction on enhancement of money rents.

40. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

Section 59 (*1*).

Enhancement of rent by registered contract.

41. (*1*) The money rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions :—

Section 59 (*2*)

(*a*) The rent must not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the raiyat.

(*b*) The contract must fix the rent for a term of at least seven years.

(*c*) If the enhanced rent exceeds by more than two annas in the rupee, the previous rent, the contract must fix the rent for a term of at least fifteen years.

Section 59 (*2*).

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

Section 61.

Enhancement on re-letting.

42. (*1*) Where land which has been previously held by a tenant at a money-rent is let to, a settled raiyat of the village or estate in which it is situate, the raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract for enhancement of the rent.

(*2*) The provisions of the last foregoing section shall apply to every such contract.

[ D., § 43 (1). and (2). C. B , s. 22 (1), (3) and (4). B. B., s. 23 (1), (3) and (4). ] Section 74.

Enhancement of rent by suit.

43. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely :—

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

Rules as to enhancement on ground of prevailing rate.

44. Where an enhancement is claimed on the ground that the rent paid is below the prevailing rate—

(*a*) The enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

(*b*) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure* by such Revenue-officer as the Local Government may authorize by rule in that behalf.

*XIV of 1882. Act. XII of 1881, s. 20.

(*c*) In determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it it is proved that by local custom caste is taken into account in determining the rate ; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom.

(*d*) In ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Rules as to enhancement on ground of rise in prices.

45. Where an enhancement is claimed on the ground of rise in prices—

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(c) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

Rules as to enhancement of ground of landlord's improvement.

46. Where an enhancement is claimed on the ground of a landlord's improvement—

(a) The Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act.

(b) In determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive power of the land caused or likely to be caused by the improvement;

(ii) the cost in the improvement;

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(c) The Court may make its decree conditional, and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

47. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) The Court shall not take into account any increase which is merely temporary or casual.

(b) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.

(c) The Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement to be fair and equitable.

48. The Court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

Power to order progressive enhancement.

49. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached. [C. B., s 23 (d). B. B., s. 24 (d).] Section 77.

Limitation of right to bring successive enhancement-suits.

50. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rent paid is below the prevailing rate, or on the ground of an increase in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if within the said period of fifteen years the rent has been commuted under section 53 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or any ground corresponding thereto or dismissing the suit on the merits. B B., s. 143.] Section 78

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure. XIV of 1882.

*Reduction of rent.*

Reduction of rent.

51. An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding not otherwise, namely— [D., § 47. C B., s. 25 (2) and (3). B. B., s. 25 (2) & (3).] Section 79.

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other like calamity, or

(b) on the ground that there has been a fall in the average prices of staple food crops in the locality or at the usual markets.

(2) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

*Price-lists.*

Price-lists of staple crops.

52. (1) The Collector of every district shall prepare, at such time or times of the year as the Local Government fixes in this behalf, lists of the market-prices at harvest-time of staple food crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision. [C. B., 122. B. B, s. 145] Section 83 (1).

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette. Section 83 (2)

(4) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at the time to which it relates. Section 83 (3).

(5) The Collector shall, fifteen days before submitting a price-list to the Board of Revenue under this section, publish it within the local area to which it relates in the manner in which notices are usually published, and if any landlord or tenant of land within the local area within the said period of fifteen days presents to him in writing any objection to the list he shall submit the same to the Board of Revenue with the list.

*Commutation.*

*Commutation.*

[C. B., s 86. B. B., ss. 90 and 92.] Section 82 (1).

Commutation of rent payable in rent.

53. (1) Where an occupancy-raiyat pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector, or sub-divisional officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and shall order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

Section 82 (2).

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and

(b) the average value of the rent actually received by the landlord during the preceding ten years.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as other orders made by Revenue-officers.

(6) If the application is opposed, the officer may, for reasons recorded in writing, refuse to grant it.

*Power to make rules.*

*Power to make rules.*

C. B., ss. 120, 122 and 23(c). B. B., ss. 134, 145 and 24 (c).] Section 84.

Power to make rules.

54. The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules—

(a) for the guidance of officers engaged in the preparation of price-lists under section 52;

(b) determining what food crops shall be deemed to be staple crops for the purposes of this chapter in any local area, and

(c) for the guidance of officers registering contracts under section 41 and section 42.

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## CHAPTER VI.

### NON-OCCUPANCY-RAIYATS.

Section 88.

Application of chapter.

55. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Section 89.

Initial rent of non-occupancy-raiyat.

56. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

57. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 60.

[C B., s. 79 (5.)] B B, ss. 26, 72 (5).] Section 90.

Grounds on which non-occupancy-raiyat may be ejected.

58. A non-occupancy-raiyat shall be liable to ejectment on one or more of the following grounds, and not otherwise:—

(a) On the ground that he has failed to pay an arrear of rent.

(b) On the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(c) Where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(d) On the ground that he has refused to agree to pay a fair and equitable rent determined under section 60 or that the term for which he is entitled to hold at such a rent has expired.

Section 91.

Conditions of ejectment on ground of expiration of lease.

59. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

60. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(*2*) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a raiyat on whom an agreement has been served under sub-section (*2*) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following. Sections 92 (*1*) and 93 (*1*).

(*4*) When an agreement has been executed and filed by a raiyat under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the raiyat does not execute the agreement and file it under sub-section (*3*) he shall be deemed for the purposes of this section to have refused to execute it. Sections 92 (*2*) and 93 (*2*).

(*6*) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy. Section 93 (2).

(*8*) If the raiyat does not agree to pay the rent so determined the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable the Court shall have regard to the average rent payable by raiyats for land of a similar description and with like advantages in the vicinity, but shall not allow any enhancement exceeding eight annas per rupee of the previous rent.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. Section 92 (2).

61. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of "admitted to occupation".

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## CHAPTER VII.

### UNDER-RAIYATS.

62. The landlord of an under-raiyat holding at a money rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

Limit of rent recoverable from under-raiyats.

(*a*) When the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) In any other case—twenty-five per cent.

63. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Restriction on ejectment of under-raiyats.

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## CHAPTER VIII.

### GENERAL PROVISIONS AS TO RENT.

*Rules and presumptions as to amount of rent.*

64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

Rules and presumptions as to fixity of rent.

*Rules and presumptions as to amount of rent.* [D., §§ 20 & 37. C. B., ss 6 & 16. B. B., ss. 6 & 15.] Section 14

[D., §§ 21 & 38. C. B., ss. 6 & 17. [B. B., ss. 6 & 16.] Section 15.

(2) If it is proved in any suit or other proceeding under this Act that a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies or any classes of tenancies at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area which has not been so registered.

[D., § 38. C. B., s. 16, Expl. I. B. B., s. 15, Expl. I.] Section 16.

(3) When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the raiyat and his landlord to a fixed money rent.

[D., § 37. C. B., s. 16, Expl. II. B. B., s. 15, Expl. II.] Section 17.

(4) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

[D., § 20. C. B., s. 6. B. B., s. 6.] Section 19.

(5) Nothing in this section shall apply where the land is held for a term of years or the tenancy thereof is determinable at the will of the landlord.

Section 120.

Presumption as to amount of rent and conditions of holding.

65. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

*Alteration of rent on alteration of area.* [D., §§ 19, 2, 43 (3) & 47. C. B., ss. 8, 18, 22 (2) & 25 (1). B. B., ss. 8, 18, 23 (2), 25 (1).] Section 96.

### *Alteration of rent on alteration of area.*

Alteration of rent in respect of alteration in area.

66. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, and

(b) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the amount to be added to the rent the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure.

(3) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

*Payment of rent.* [C. B., s. 55 (a). B. B., s. 47 (a).] Section 97.

### *Payment of rent.*

Instalments of rent.

67. (1) A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and in the absence of any agreement or custom, in such instalments and on such dates as the Local Government may fix by rule for any local area.

[C. B., s. 53 (b). B. B., s. 47 (b).] Section 98.

(2) A money-rent payable by a raiyat or under-raiyat shall be paid in such instalments, representing respectively such proportions of the yearly rent, and on such dates, not being more than four in each year, as the Local Government may fix by rule for any local area, and, subject to any such rules, as may be fixed by agreement, or in the absence of agreement, by custom.

[B. B., s. 47 (b).] Section 99 (1). Section 99 (2).

(3) In making rules under this section the Local Government shall take into consideration the prevailing customs, the time of harvest, and the time at which land-revenue is payable.

(4) Every rule made under this section shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

Time and place for payment of rent.

68. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may make rules authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear. [D., § 101 C. B., s. 56. B. B., s. 48.] Section 3 (12).

Appropriation of payments.

69. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

*Receipts and accounts.*

*Receipts and accounts.* [D., § 61. C. B., s. 57. B. B., s. 49 (a) and (b).] Section 100

Tenant making payment to his landlord entitled to a receipt.

70. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify the several particulars shown in the form of receipt given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

71. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge, signed by the landlord. [C. B., s. 51 (b). B. B., s. 49 (c). Section 101.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

72. (1) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 70 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit. [D., § 65 C. B., s. 57 (d). B. B., ss. 49 (d) & 94.] Section 102.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 71, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

*Deposit of rent.*

*Deposit of rent.* [D., § 99. C. B., ss. 58 & 59. B. B., ss. 50 & 51.] Section 103.

Application to deposit rent in public office.

73. (1) In any of the following cases, namely :—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe that owing to a dispute or ill-feeling the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent in their behalf; or

(d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall, in case (d), state the name of the person to whom the rent was last paid, and of the person or persons now claiming it; shall be signed by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount, not less than eight annas, as the Local Government from time to time by rule directs.

Receipt granted by public officer for rent deposited to be a valid acquittance.

74. (1) If it appears to the officer to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for it under his official seal. [D., §§ 99 & 100. C. B., s. 60. B. B., s. 52.] Section 104

(2) The officer may, if he thinks fit, before receiving the rent, examine the person who has signed the statement required under the last foregoing section.

(3) A receipt given under this section shall operate as an acquittance for the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if the rent had been received—

in case (a) of the last foregoing section, by the person to whom the rent was tendered;
in case (b) of that section, by the person specified in the application as the person to whom the rent was payable;
in case (c) of that section, by the co-sharers jointly; and
in case (d) of that section, by the person entitled to the rent.

[D., § 100. C. B., s. 61(a). B. B., s. 53 (a).] Section 105.

Notification of receipt of deposit.

75. (1) The officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the officer shall cause a notice of the receipt of the deposit to be served, free of charge, on every person who he has reason to believe claims or is entitled to the deposit.

[D., § 100. C. B., s. 61, cls (b) & (c). B. B., s 53, cls (b) & (c). Sections 106 and 107

Payment or refund of deposit.

76. (1) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the officer with whom the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by an officer receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

*Arrears of rent.*

## *Arrears of rent.*

Rent first charge on transferable holding.

77. (1) The rent of every transferable holding shall be a first charge on the holding.

[C B, s 64 B B, s. 56] Section 125.

(2) If the right, title and interest of the tenant is brought to sale in execution of a money decree obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant, but this right shall be without prejudice to the landlord's charge under sub-section (1).

[D., §§ 12 (5) & 93 C.B., ss. 79(5) & 152 B B., ss 72 (5) & 169] Section 111.

Ejectment from non-transferable holding for arrears.

78. (1) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengalí year where that year prevails, or at the end of the month of Jeyt where the Fuslí or Amlí year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) A decree passed in favour of the plaintiff in any such suit shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

[D., § 101. C. B., s. 56. B B., s 48.] Section 108.

Interest on arrears.

79. In fixing the rate of interest on an arrear of rent, the Court shall have regard to established usage and to the agreement, if any, between the parties; but shall ordinarily decree simple interest at the rate of twelve per centum per annum from the expiration of the agricultural year in which the arrear fell due to the institution of the suit.

[D., § 68 C B., s. 90 B B., s. 96.] Section 109.

Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.

80. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

[D., § 69 C. B., s. 91. B B., s. 97.] Section 110.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

*Produce-rents.*

Order for appraising or dividing produce.

81. (*1*) Where rent is taken by appraisement or division of the produce— *Produce-rents.* [C. B., s. 84 B. B., s. 88.] Section 112.

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(*2*) The Collector may, without such an application, make the like order in any case where in the opinion of the Magistrate of the District or Sub-division the making of the order would be likely to prevent a breach of the peace.

(*3*) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

Procedure where officer appointed.

82. (*1*) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given. Section 113

(*2*) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex-parte*.

(*3*) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector. Section 115 (*1*).

(*4*) The Collector shall consider the report, and after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just. Section 115 (*2*).

(*5*) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall be enforceable as a decree.

(*6*) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office. [C. B., s 85 B. B., s. 89.] Section 118.

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

(*4*) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

*Liability for rent on change of landlord.*

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

84. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the lanlord whose interest was so transferred, unless the transferee has given notice of the tranfer to the tenant. *Liability for rent on change of landlord.* [D., § 9 C. B., s. 78. B. B., s 70.] Section 122

(*2*) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

*Illegal Cesses, &c.*

Abwáb, &c., illegal

85. All impositions upon tenants under the denomination of *abwáb, mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void. *Illegal cesses, &c* [D. §§13 & C. B, s. 71. B. B., s 63 (2).] Section 123

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

86. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, [D., § 64 B. B., ss. 63(2 64 (*a*), 93.] Section 124

institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding five hundred rupees; or, when double the amount or value of what is so exacted exceeds five hundred rupees, not exceeding double that amount or value.

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## CHAPTER IX.

### MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

*Improvements.*

*Improvements.*

[C. B., s. 29. B. B., s. 69.] Section 126.

Definition of improvement.

87. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(*2*) The following shall be presumed, until the contrary is shown, to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(*3*) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of the estate or tenure of his landlord.

Right to make improvements in case of holding at fixed rates.

88. Where a raiyat holds at a fixed rent or a fixed rate of rent, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

[C. B., s. 77. B. B., s. 69.] Section 127.

Right to make improvement in case of occupancy-holding.

89. (*1*) Where a raiyat has an occupancy-right in his holding neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(*2*) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(*3*) If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

[C. B., s. 77. B. B., s. 69.] Section 128.

Right to make improvement in case of non-occupancy-holding.

90. (*1*) A non-occupancy-raiyat shall be entitled to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(*2*) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlord's improvements.

91. (*1*) A landlord may register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making, by application to such Revenue-officer as the Local Government may appoint.

(*2*) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government by rule directs.

(*3*) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Application to record evidence as to improvement.

92. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon record the evidence in the presence of the parties, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(*2*) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' improvements.

[C. B., ss. 20 (*e*) and 29.] Section 129.

93. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

(*2*) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(*3*) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

Section 130.

(*5*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

Section 131.

94. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the letting-value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an enhanced rent.

(*2*) When the amount of the compensation has been assessed, the landlord and raiyat may, if they think fit, agree that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

### *Surrender and abandonment.*

*Surrender and abandonment.*

Surrender.

[D., § 12 (3). C. B., s. 79 (3). B. B., s. 72 (3).] Section 139.

95. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his right and interest in the holding.

(*2*) But, notwithstanding the surrender, the raiyat shall continue to be liable for the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) In the following cases the Court shall for the purposes of this section presume, until the contrary is shown, that such notice was so given, namely :—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate;

(*c*) if the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

(*4*) The raiyat may, if he thinks fit, cause the notice to be served through the Court within the jurisdiction of which the holding or any portion of it is situate.

(*5*) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

Abandonment.

[D., § 12 (4). C. B., s. 79 (4). B. B., s. 72 (4).] Section 140.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some

other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government by rule directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

*Sub-division of holding.*

[B. B., ss. 21 (b), 37.] Section 150.

*Sub-division of holding.*

Portion of holding not transferable.

97. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee or the person to whom it is bequeathed as a separate holding.

*Ejectment.*

[C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7).] Section 149.

*Ejectment.*

No ejectment except in execution of decree.

98. No tenant shall be ejected from his holding except in execution of a decree.

*Measurements.*

[D., § 58. C. B., s. 75. B. B., s. 67.] Section 133.

*Measurements.*

Landlord's right to measure land.

99. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases:—

(a) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(b) Where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation.

(c) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

[D., § 94. B. B., ss. 176 & 177.] Sections 134 and 135.

Power for Court to order tenant to attend and point out boundaries.

100. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

[D., § 94. C. B., s. 76(a). B. B., s. 68 (a).] Section 137.

Standard of measurement.

101. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bígha.

(2) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

[D., § 98. C. B., s. 76(b). B. B., s. 68 (b).] Section 138.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

*Managers.*

[D., § 16. C. B., s. 56(1). B. B., s. 57 (1).] Section 142.

*Managers.*

Power to call upon co-owners to show cause why they should not appoint a common manager.

102. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to shew cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is co-owner of

an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876. VII, 1876 (B.C.)

103. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made. [C. B., s. 65 (2). B. B., s. 57 (2).] Section 143.

Power to order them to appoint a manager if cause is not shown.

104. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time— [C. B., s. 66 (1). B. B., s. 58 (1).] Section 144.

Power to appoint manager if order is not obeyed.

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards assents to undertake the management thereof; or

(*b*) in any case appoint a manager.

105. The Lieutenant-Governor of Bengal may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager. [C. B., s. 66 (2). B. B., s. 58 (2).] Section 145.

Power to nominate person to act in all cases under clause (*b*) of last section.

106. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 104, so much of the provisions of the Court of Wards Act, 1879,* as relates to the management of immoveable property shall apply to the management. [C. B., s. 66 (3). B. B., s. 58 (3)] Section 146 *IX (B. C.) of 1879.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

107. (*1*) A manager appointed under section 104 shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs. [C. B., s. 67. B. B., s. 59.] Section 147.

Provisions applicable to manager.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 112.

(*8*) He shall be removeable by the order of the District Judge and not otherwise.

108. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 104, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights. [C. B., s. 68. B. B., s. 60] Section 148.

Power to restore management to co-owners.

109. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

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## CHAPTER X.

### Record-of-rights and Settlement of Rents.

*Record-of-rights.*

110. (*1*) The Local Government may in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies or any class of tenancies in a local area by Revenue-officers to be from time to time appointed by the Local Government. *Record-of-rights.* Section 164.

Power to order preparation of record-of-rights.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits for the payment of expenses such amount as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

(c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Section 164

Particulars to be recorded.

111. Where an order is made under the last foregoing section the particulars to be recorded shall be specified in the order, and may include some or all of the following, namely :—

(a) the name of each tenant;
(b) the class to which he belongs, that is to say whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat;
(c) the situation, quantity and boundaries of the land held by him;
(d) the name of his lanlord;
(e) the rent payable;
(f) the mode in which that rent has been fixed, whether by contract, by order of a Court or otherwise;
(g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
(h) the special conditions, if any, under which the tenant holds.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

112. On the application of a proprietor or tenure-holder, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Sections 157 to 159

Publication of record.

113. (1) When the Revenue-officer has completed the record he shall cause a draft thereof to be locally published in such manner and for such period as the Local Government by rule directs, and shall receive and consider any objection whch may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally settle the record, and shall cause it to be locally published in such manner as the Local Government by rule directs, and such publication shall be conclusive evidence that the record has been duly made under this Chapter.

Procedure in case of dispute as to entries in record.

114. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry which the Revenue-officer proposes to make or has made therein, the Revenue-officer shall hear and decide the dispute, and for that purpose shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision shall have the force of a decree.

XIV of 1882.

Appeals from decisions of Revenue-officers.

115. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

(2)) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 1882.

XIV of 1882.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter.

Undisputed entries in record to be presumptive evidence.

116. (1) Every record made under this Chapter shall distinguish between the disputed and the undisputed entries therein.

Section 165.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

*Settlement of rents.*

Section 151.

*Settlement of rents.*

Power to order Revenue-officers to settle rents.

117. (1) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class or classes of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf:

Provided that the Local Government shall not make such an order until it is satisfied after local enquiry that the making of the order would be expedient.

(2) The cases in which an order may be made under this section are the following, namely :—

(a) any case in which a Revenue-officer may be directed under this Chapter to prepare a record-of-rights, and
(b) where a settlement of revenue is bieng made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

(4) While an order under this section continues in force in respect of any tenants, a Civil Court shall not entertain a suit under this Act for the enhancement or reduction of the rents of any of those tenants. Section 152.

118. (1) When a Revenue-officer is directed under this Chapter to make a settlement of rents he shall ascertain and make a record of the particulars specified in section 111, and such other particulars, if any, as the Local Government may direct him to ascertain and record. Section 156.

Procedure for settlement of rents.

(2) If at any time before the rent-roll is finally published as hereinafter provided, a dispute arises as to the correctness of any entry which the officer has made or proposes to make in the record under sub-section (1), the provisions of sections 114 and 115 shall apply.

(3) In the case of a tenure the rent of which is liable to alteration, or an occupancy-raiyat's holding, the officer shall, on the application of either landlord or tenant, settle a fair and equitable rent in respect thereof. Section 153.

(4) For this purpose he shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall, have regard to the rules laid down in this Act for the guidance of the Civil Court in settling rents. Section 153.

(5) In all proceedings under sub-sections (3) and (4) the officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, and his decision in every such proceeding shall have the force of a decree. XIV of 182.

(6) An appeal shall lie from every such decision to the Special Judge appointed under section 115, whose decision thereon shall be final, subject to this qualification, that if in a second appeal under sub-section (2) of this section the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same rent-roll, as ascertained or settled under this section.

(7) When the Revenue-officer has recorded the particulars and settled the rents which he is required to record and settle, he shall prepare the draft of one or more rent-rolls, showing the particulars recorded by him, and, when he settles the rent, the amount of the rent as settled.

(8) Section 113 shall apply to every rent-roll made under this section as if it were a record within the meaning of that section, and section 116 shall apply to all entries made in any such rent-roll under sub-section 1 of this section.

119. When any rent is altered under the last foregoing section, the alteration shall take effect from the beginning of the agricultural year next after the final publication of the rent-roll.

Time at which alteration of rent is to take effect.

120. When a landlord is entitled to apply to have the amount of the rent of a holding settled under section 118, sub-section (3), the rent of the holding as ascertained or settled under this chapter shall not be enhanced during a period of fifteen years from the date of the final publication of the rent-roll, except on the ground of a landlord's improvement or of an alteration in the area of the holding.

Period for which rents as settled are to remain unaltered.

### *Supplemental.*

*Supplemental.*

121. Where an order is made under this chapter on the application of a landlord, or of several landlords or tenants, or for the purpose of settling or averting a serious dispute between tenants and their landlords, all expenses incurred by the Government in carrying out the provisions of this chapter in any local area, including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may, from time to time, fix of the salaries of officers employed in carrying out those provisions therein in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are ascertained or settled under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him. Section 163.

Expenses of proceedings under Chapter

122. When the particulars mentioned in section 111, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 64 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

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## CHAPTER XI.

### Tables of rates.

123. The Local Government may, by an order in the official Gazette, direct a Revenue-officer to take steps to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats. [B B, ss 131 & 132.] Section 62.

Power to direct preparation of table.

124. The table shall specify— [B. B, s. 133.] Section 63.

Contents of table.

(1) the several classes of land for which, having regard to the tenure of the soil, situation,

means of irrigation and other like considerations, it is necessary to fix different rates of rent; and

[B B, s 133] Section 64

(b) the rate of rent fairly and equitably payable by occupancy-raiyats holding land of each such class.

Principle on which rent-rates are to be fixed.

125. In fixing the rate of rent for any class of land under section 124 regard shall be had—

(a) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time when the table is prepared;

(b) to the average prices of staple food crops in the locality or at the usual markets about the time at which those rates were fixed, or, if that time or the average prices about that time cannot readily be ascertained, to the average prices about any other time which it may appear equitable and practicable to take for the purpose of comparison;

(c) to the average prices of staple food crops in the locality or at the usual markets at the time at which the table is prepared; and

[C. B., s 23 (b). B B., s. 24 (b).]

(d) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the average prices of staple food crops the new rate shall not bear to the old rate a higher proportion than the increased average prices bear to the former average prices:

[C. B., s 23 (c). B. B., s. 24 (c).]

Provided that the rate fixed for any class of land shall not exceed the existing rate by more than four annas in the rupee.

[B. B., s 137.] Section 65.

Local publication of the table.

126. When the Revenue-officer has prepared the table, he shall publish it in the local area to which it relates, in the vernacular language prevailing in that local area, in such manner as the Local Government may from time to time prescribe.

[B B., s. 138.] Section 66.

Revenue-officer to deal with objections.

127. Any person objecting to any entry in the table may present a petition to the Revenue-officer, within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

[B B, s 139.] Section 67.

Table to be submitted to superior Revenue-authorities.

128. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received, through the Commissioner of the Division to the Board of Revenue for approval.

[B. B., s 140.] Section 68.

Proceedings of Board of Revenue thereupon.

129. The Board of Revenue may amend the table submitted under the last foregoing section in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

[B B., s. 141.] Section 9.

Publication of table after final sanction.

130. When a table-of-rates has been sanctioned by the Board, it shall be submitted to the Local Government, which, after considering such objections as may be submitted to it in writing, may amend the table in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

[B. B, s. 143.] Section 70.

Period for which table remains in force.

131. A table for any local area published under the last foregoing section shall come into force on the date on which it is so published, and shall continue in force for such period, not less than fifteen or more than thirty years, as the Local Government at the time of publication may direct.

[B. B, s 142] Section 71.

Table to be conclusive evidence.

132. The publication of a table under section 130 shall be conclusive evidence in any proceeding under this Act—

(1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act; and

(2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies.

Section 72.

Expenses incurred in preparing table how defrayed.

133. All expenses incurred by the Government in preparing a table-of-rates for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupancy-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

[B B., s. 144] Section 73.

Suit to enhance where table is in force.

134. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area, held by an occupancy-raiyat at a money rent, may institute a suit to enhance the rent then payable on the ground that it is below that which would

be payable at the rates shown in the table; and the Court shall enhance the rent in accordance with the rates shown in the table: Provided that—

*1st.*—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely :—

(*a*) if the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate; [D., § 43. C. B., s. 22, cls (3) and (4). B. B., s. 23, cls. (3) & (4).]

(*b*) if the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

(*c*) if it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate. [C. B., s. 23, cl (*a*). B. B., s. 24 (*a*).]

*2ndly.*—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

*3rdly.*—Section 49 shall apply to all decrees for enhancement passed under this section, and section 50 shall apply to all suits for enhancement under this section as if they were suits for enhancement under Chapter V on the ground that the rent is below the prevailing rate or on the ground of an increase in prices.

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*Illustrations.*

(*a*) The rates shown in the table for land of a certain description are—

when the land is irrigated from a well . . . . . Rs. 4 per acre,
when the land is not so irrigated . . . . . Rs. 2 „

The holdings of *A*, *B*, *C* and *D*, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows :—

when such land is irrigated from a branch of a river . . . . . Rs. 4 per acre,
when such land is not so irrigated . . . . . Rs. 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

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## CHAPTER XII.

### Record of Proprietor's Private Lands.

Power for Government to order survey and record of proprietor's private lands.

135. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 30. [B. B., ss. 76 to 82.] Sections 7 to 13

Power for Revenue-officer to record private land on application of proprietor or tenant.

136. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

137. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 113, 114, 115 and 116 shall apply.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land— [C. B., s. 81. B. B., ss. 3 & 75.] Section 5.

(*a*) land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírát, sír, nij, nij-jot or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

## CHAPTER XIII.

### DISTRAINT.

[B. B., ss. 101, 104, 123.] Section 166.

Cases in which an application for distraint may be made.

139. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,

(a) any crops or other products of the earth standing or ungathered on the holding;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

VII (B.C.) of 1876.

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 71, 125.]

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss. 104-5.] Section 167.

Form of application.

140. (1) Every application under the last foregoing section shall specify—

(a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(b) the name of the tenant;

(c) the period in respect of which the arrear is claimed;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(e) the nature and approximate value of the produce to be distrained;

(f) the place where it is to be found, or such other particulars as may suffice for its identification; and

(g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

XIV of 1882.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints, and, if the application so verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

[B. B., ss. 105 & 106.] Section 168.

Procedure on receipt of application.

141. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

142. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court: [B B., s. 107] Section 169.

Execution of order of distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering. [D., § 111]

143. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made. [B. B, s. 108.] Section 170.

Service of demand and account.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

144. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation. [B. B, ss 109 and 110] Section 171.

Right to reap, &c, produce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

145. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction: [B B., s 113] Section 172.

Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

146. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage. [B B, s. 114] Section 173

Place of sale.

147. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing. [D., § III.] Section 174.

When produce may be sold standing

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

148. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder. [B B, s. 115.] Section 175.

Manner of sale.

149. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property. [B. B., s. 116.] Section 176.

Postponement of sale.

150. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold. [B B, s. 117] Section 177.

Payment of purchase-money.

151. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid. [B B., s. 118] Section 178.

Certificate to be given to purchaser.

152. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf. [B. B., s. 119] Section 179.

Proceeds of sale how to be applied.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

[B. B., s. 120.] Section 180.

Certain officers may not purchase.

153. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

[B. B., ss. 111, 112 & 123] Section 181.

Procedure where demand is paid before the sale.

154. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 143, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter, shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s. 124.] Section 182.

Amount paid by under-tenant for his lessor may be deducted from rent.

155. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in the section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B B, s. 126.] Section 183.

Conflict between rights of superior and inferior landlords.

156. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Section 184

Distraint of property which is under attachment.

157. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 152 without the sanction of the Court by which the order of attachment or sale was issued.

Suit for compensation for wrongful distraint.

158. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 140 in any case in which such an application is not permitted by section 139 may institute a suit against the applicant for the recovery of compensation.

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## CHAPTER XIV.

### Judicial Procedure.

XIV of 1882.

Power to modify Civil Procedure Code in application to landlord and tenant suits.

159. (1) The High Court may, from time to time, with the approval of the Local Government, make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

Section 188.

Jurisdiction in proceedings under Act.

160. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

XIV of 1882

(2) When under this Act a Civil Court is authorized to make an order on the application

of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the recovery of possession of the holding.

Náibs or gumáshtas to be recognized agents.

161. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending. [D., § 169. C. P., s. 150. B. B., s. 167 (a).] Section 189. XIV of 1882.

Special register of suits.

162. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf. [D., § 173. C. B., s. 147. B. B., s. 164. Section 190. ] XIV of 1882.

Procedure in rent-suits.

163. The following rules shall apply to suits for the recovery of rent :—

(a) Sections 121 to 127 (both inclusive), 129, 305, and 320 to 325C (both inclusive), of the Code of Civil Procedure shall not apply to any such suit. [C. B., s. 165. B. B., s. 187.] Section 191. XIV of 1882.

(b) The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification. [D., §§ 149 & 185. C. B., s. 167. B. B., s. 189.] Section 192. XIV of 1882.

(c) The summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only. [D., § 192. C. B., s. 174. B. B., s. 195. Section 193. XIV of 1882.

(d) The service of the summons may, if the Court so directs, be effected, either in addition to or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866. Section 194. XIV of 1882.

(e) A written statement shall not be filed without the leave of the Court. D., § 108. C. B., s. 184. B. B., s. 206.] Section 195.

(f) The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not. [BB., s. 214.] Section 196. XIV of 1882.

(g) The Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears. [D., §§ 177 & 228. C. B., ss. 155 & 197. B. B., ss. 171 & 219.] Section 197.

(h) Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. [C. B., s. 198. B. B., s. 220.] Section 200. XIV of 1882.

Payment into Court of money admitted to be due to third person.

164. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due. Section 199.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within *three months* from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff, money paid to him under sub-section (3) :

Payment into Court of money admitted to be due to landlord.

165. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment by instalments.

166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

Court to grant receipt.

167. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be. Section 199 (2).

[D., § 179. C. B., ss. 157 & 220. B. B., ss. 173 & 242.] Section 193.

Appeals in rent-suits.

168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*).] Section 201.

Date from which decree for enhancement takes effect.

169. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

[B. B., ss. 21 (*e*), 31, 44 & 45 Vic., C. 41, s. 14.] Section 202.

Relief against forfeitures.

170. (*1*) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

[C. B., s. 80. B. B., s. 73.] Section 203.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

171. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value.

(*c*) But a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

[C. B., s. 80. B. B., s. 73. Section 204.

(*d*) If the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Section 205.

Adjustment of mutual claims in ejectment-proceedings.

172. (*1*) In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Section 206.

(*2*) If it appears to the Court that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sums specify a time within which it must be paid into Court.

(3) If it is so paid within the time specified, the Court shall eject the tenant; and if it is not so paid, the Court shall refuse to eject the tenant.

Power for Court to fix fair rent as alternative to ejectment.

173. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

174. (1) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:— [C. B., s. 151. B. B., s. 168.] Section 207.

(a) the situation, quantity and boundaries of the land held by the tenant;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under raiyat, and, if he is a tenure-holder, whether his rent is liable to enhancement; and

(c) the rent payable by him at the time of the application.

(2) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government by rule directs. XIV of 1882.

(3) The order on any application under this section shall have the effect of and be subject to the like appeal as a decree.

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## CHAPTER XV.

### Sale for Arrears under Decree.

General powers of purchaser as to avoidance of incumbrances.

175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as 'protected interests' but with power to annul the interests defined in this chapter as 'incumbrances.'

Provided as follows:—

(a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(b) the power to annul shall be exerciseable only in manner by this chapter directed.

Protected interests.

176. The following shall be deemed to be protected interests within the meaning of this Chapter— [D., §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210. B. B., ss. 228, Expl., & 232.] Section 208 (1).

(a) any under-tenure existing from the time of the permanent settlement;

(b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, of burning or burying grounds have been made;

(d) any right of occupancy;

(e) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(f) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance".

177. For the purposes of this Chapter—

(a) the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section. Section 208 (1).

(b) The term "registered and notified incumbrance" used with reference to a holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means as incumbrance created by an instrument registered under the Indian Registration Act, 1877, and of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided. [C. B., s. 206 Expl. B. B., s. 228 Expl.] Section 208 (2). III of 1877.

Application for sale of holding.

178. When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, he shall produce a statement of the annual rent of the holding, and, if the holding is a permanent tenure, a copy of so much of the register kept under Chapter III of this Act as relates to the tenure. [C. B., s. 201. B. B., s. 223.] Section 209. XIV of 1882.

[D. § 152. C. B., s. 203. B. B., s. 225.] Section 210. XIV of 1882.

Proclamation announcing sale.

179. (1) When an order has been passed for the sale of a holding upon an application made under the last foregoing section, the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

(a) in the case of a tenure, that the tenure will first be put up to auction subject to the registered and notified incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

[C. B., s. 206. B. B., s. 228 (a) and Expl.] Section 211.

Sale of tenure subject to registered and notified incumbrances, and effect thereof.

180. (1) When a tenure has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance upon the tenure not being a registered and notified incumbrance.

[C. B., s. 207 B. B., s. 229 (a)] Section 212 (1). XIV of 1882.

Sale of tenure with power to avoid all incumbrances, and effect thereof.

181. (1) If the bidding for a tenure put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

[D., § 155. C. B., s. 210. B. B., s. 232.] Section 212 (2).

(2) The purchaser at a sale under this section may, in manner provided by section 184, and not otherwise, annul any incumbrance on the tenure.

Application of foregoing provisions to holdings at fixed rates.

182. The foregoing sections shall apply to a holding at a fixed rent or rate of rent as if it were a tenure.

[B. B., s. 228, (b).] Section 213.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

183. (1) When an occupancy-holding has been advertised for sale under section 179, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance on the holding.

Section 214.

Procedure for annulling incumbrances under the foregoing sections.

184. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B. B., s. 225 (c).] Section 215.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

185. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D., § 246. C. B., s. 211. B. B., s. 233.] Section 216. XIV of 1882.

Rules for disposal of the sale-proceeds.

186. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of

the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(*d*) The balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(*2*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

187. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon. [D., § 153. C. B., s. 204. B. B., s. 226] Section 217. XIV of 1882.

(*2*) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(*3*) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this chapter.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

188. (*1*) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale, [D., §§ 35, 36 154. C. B., s. 205. B. B., s. 227.] Section 218.

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(*b*) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the holding as mortgagee and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

189. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached. [D., §§ 35, 35, 154. C. B., s. 205. B. B., s. 227] Section 219.

Decree-holder may bid at sale; judgment-debtor may not.

190. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding. [C. B., s. 208 (1). B. B., s 230 (1).] Section 220. XIV of 1882

(*2*) The judgment-debtor shall not bid for or purchase a holding so sold.

Operation of sections 313 and 326 of Code of Civil Procedure excluded.

191. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this chapter. Section 221. XIV of 1882.

Registration of certain instruments creating incumbrances.

192. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act. Section 222 III of 1877.

Notification of incumbrances to landlord

193. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons. [C. B., s. 206, Expl. B. B., s. 2 Expl.] Section 223. III of 1877.

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## CHAPTER XVI.

### Summary Sale for Arrears.

*Sale of patní tenures.*

Right of proprietor to recover arrears from patnidár by summary sale.

194. If default is made in payment of the rent due in respect of a patní tenure held immediately from a proprietor, the proprietor may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules contained in the following sections of this chapter. Sale of patní tenures. [D., § 135. C. B., s. 133. B. B., s. 147.] Section 42.

Bengal Regulation VIII of 1819, s. 8, cl (2). Schedule III.

Application for sale at beginning of year.

195. (1) On the first day of Baisákh, that is, at the commencement of the following year from that for which the rent is due, the proprietor may present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, in respect of all or any of the tenures described in the last foregoing section.

(2) The petition shall then be stuck up in some conspicuous part of the Collector's office, with a notice that if the amount claimed is not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

(3) The proprietor shall cause a similar notice to be stuck up at his own sadr kachari and a copy or extract of such part of the notice as applies to the individual case to be sent and similarly published at the kachari at which the principal business of the tenure is transacted, or at the principal town or village on the land of the defaulter's tenure.

(4) The proprietor shall be exclusively answerable for the observance of the forms prescribed by this section.

Service of notice.

196. (1) The notice required to be sent into the mufassal shall be served by a single peon who shall bring back the receipt of the defaulter, or of his manager, for the same; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

(2) If the people of the village object or refuse to sign their names in attestation, the peon shall go to the office of the nearest munsif, or, if there should be no munsif, to the nearest police-station, and there make voluntary oath of the same having been duly published. A certificate to this effect shall be signed and sealed by the said officers and delivered to the peon.

(3) If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth day of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Bengal Regulation VIII of 1819, s 8, cl. (3). Schedule III.

Application for sale in middle of year.

197. On the first day of Kártik, in the middle of the year, the proprietor may present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first day of Aghan, unless the whole of the advertised balance is paid before the date in question, or so much of it as will reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor, according to the kistbandi, calculated from the commencement of the year to the last day of Kártik.

Proceedings when tenure-holder contests demand.

198. (1) When a notice has been issued under the foregoing sections in respect of an arrear alleged to be due by a tenure-holder, the tenure-holder may, at any time before the day fixed therein for the sale of the tenure, present to the Collector a petition contesting the demand wholly or in part.

(2) The Collector on receiving a petition under sub-section (1) shall issue a summons to the proprietor requiring him to appear at a time and place specified therein, and show cause why the sale should not be stayed or the amount of the demand reduced, as the case may be and shall, if practicable, hear the parties or such of them as appear, and determine the issues between them before the time fixed for the sale.

(3) If before the time fixed for the sale the Collector decides that no part of the arrear claimed is due, he shall dismiss the proprietor's application.

(4) If before that time he decides that any part of the arrear claimed is not due he shall reduce the demand accordingly, and his decision shall for the purposes of the proceedings under this chapter be conclusive.

(5) In cases not provided for by sub-sections (3) and (4) the tenure-holder's petition shall be dismissed, but such dismissal shall not affect his right to institute a suit to set aside the sale.

Bengal Regulation VIII of 1819, s 14.

Tenure to be sold unless arrear deposited.

199. Except as provided by the last foregoing section, a tenure in respect of which a notice has been issued under the foregoing sections shall be sold on the day fixed by the notice unless before sunset of the previous day the amount of the demand, or, when that amount has been reduced under the last foregoing section, the reduced amount has been deposited in the Collector's office by the defaulter or some other person for payment to the landlord.

Bengal Regulation, VIII of 1819, s 10 Schedule III.

Forms to be observed in case of sale.

200. (1) At the time of the sale, the notice previously stuck up in the kachahrí shall be taken down, and the lots be called up successively in the order in which they may be found in the notice.

(2) A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, with the receipt for, or certificate of, the notice directed to be published in the mufassal.

(3) No lot shall be put up to sale until the statement produced has been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice has been read. The observance of these forms shall be recorded in a separate rubakari to be held upon each lot sold.

(4) If the sale is under a petition presented on the first day of Kartik the Kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remain-

ing unpaid exceeds a four-anna proportion of the demand up to the date of sale; and the sale shall not take place unless this is ascertained.

(7) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, and the officer making the sale shall not be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

Mode of conducting sale.

201. (1) All sales of tenures under this Chapter shall be made in public kachahrí. Bengal Regulation VIII of 1819, s. 9. Schedule III.

(2) The land shall be sold to the highest bidder, and every one except the defaulter shall be free to bid.

(3) Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down.

(4) The officer conducting the sale may refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

(5) If the fifteen per cent. is not paid in cash within two hours of the sale, or an equivalent amount in Government securities is not lodged, the lot shall be resold on the same day.

(6) If the remainder of the purchase-money is not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the district.

(7) The lot shall then be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent sale; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

(8) The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Title of purchaser.

202. (1) When the entire amount of the purchase-money has been paid in by the purchaser of a tenure under this chapter, the Collector shall grant him a certificate of the payment. Bengal Regulation VIII of 1819, s. 15. Schedule III.

(2) Thereupon the purchaser shall acquire the tenure with power to avoid, in manner prescribed by section 184 for the avoidance of incumbrances, all liens, sub-tenancies, easements and other rights or interests created on the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(a) a right of occupancy;

(b) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(c) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

Purchaser to be put in possession.

203. When the purchaser of a tenure under this chapter has obtained a certificate in respect of the same under the last foregoing section, and the transfer of the tenure to him has been registered under Chapter III, he may apply to the Collector to put him in possession of the tenure, and the Collector shall thereupon put him in possession of the same, and for this purpose shall exercise all the powers conferred by the Code of Civil Procedure on a Civil Court giving possession to a purchaser at a sale in execution of a decree. Bengal Regulation VIII of 1819, s. 15. Schedule III. XIV of 1882.

Recovery of money deposited by person interested to stay sale.

204. When any person having in a tenure advertised for sale under this chapter an interest which would be voidable upon such sale deposits in the Collector's office the amount requisite under section 199 to prevent the sale, the provisions of section 188 shall apply, and if the person is a tenant inferior to the tenure-holder the provisions of section 189 shall also apply, as if the tenure was a holding advertised for sale under Chapter XV, and the payment had been made into Court to prevent the sale. Bengal Regulation VIII of 1819, s. 13. Schedule III.

Suit to set aside sale.

205. (1) Any person aggrieved by a sale of a tenure effected under cover of the provisions of this chapter but not warranted by those provisions may institute a suit against the proprietor at whose instance the sale was effected, to set aside the sale and recover compensation for the damage caused to him thereby. Bengal Regulation VIII of 1819, s. 14. Schedule III.

(2) The purchaser of the tenure shall be made a party to the suit, and shall, if the sale is set aside, be entitled to recover in the suit from the proprietor compensation for the damage (if any) suffered by him.

Suit for compensation by person whose interest becomes voidable in consequence of sale.

206. When a tenure has been sold under this chapter, any person having an interest therein which is under section 202 voidable by the purchaser may, within two months from the date of the sale, institute a suit against the defaulter to recover compensation for the damage caused to him by the sale: Bengal Regulation VIII of 1819, s. 17, cls. (5) and (;). Schedule III.

Provided that no such suit shall be maintainable by any tenant inferior to the defaulter if at the time of the sale any arrear of rent was due from him.

Disposals of proceeds of sales.

207. (1) The proceeds of a sale under this chapter shall be dealt with as follows, namely:— Bengal Regulation VIII of 1819, s. 17. Schedule III.

(a) One per cent. shall first be deducted from the proceeds, and shall be carried to the account of the Government, for the purpose of meeting the expense of any extra

establishments which it may be necessary to maintain for carrying into effect the provisions of this chapter.

(*b*) The arrear on account of which the sale may have been made (with interest and all charges incurred in bringing the tenure to sale) shall next be paid to the landlord.

(*c*) The balance (if any) remaining after the payments prescribed by clauses (*a*) and (*b*) shall be forthwith sent by the officer conducting the sale to the Treasury of the Collector, to be there retained in deposit to answer the claims of persons who may obtain decrees for compensation under section 206, until the expiration of two months from the date of the sale, and if within that period any suits are instituted under that section, until all such suits have been finally decided.

(*d*) The balance retained under clause (*c*) shall be applied in the first instance to the payment of the amounts of the decrees (if any) passed against the defaulter under section 206, being distributed rateably among the decree-holders according to the amounts of those decrees, when it is insufficient to discharge those amounts in full.

(*e*) The residue (if any) of the said balance shall be payable to the defaulter.

(2) Any person interested in money deposited under clause (*c*) may withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.

Provision as to Sundays and holidays.

208. When any day specified in this chapter is a Sunday or holiday anything required or authorized under this chapter to be done on that day may be done on the next following day not being a Sunday or holiday.

*Sale of other tenures.*

*Sale of other tenures.*

Modified application of Chapter to other registered tenures.

209. If provision is made by law for the registration in a public register of any tenures other than those saleable under the foregoing sections of this chapter, those sections shall, subject to such modifications as the Local Government from time to time by rule prescribes, apply to the tenures so registered.

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## CHAPTER XVII.

### Contract and Custom.

Provisions to take effect notwithstanding contract.

210. The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary :—

(*a*) The acquisition of the status of a settled raiyat and of the occupancy-right (sections 24, 25, and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The right of an occupancy-raiyat to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*) The protection afforded by the Act to a non-occupancy-raiyat and an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (section 66).

(*g*) The right of the raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

Permanent mukarrari leases.

211. Nothing in this Act shall be deemed to prevent a landlord in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Contracts for reclamation.

212. Nothing in this Act shall affect any contract for the reclamation of waste land.

Chur and dearah lands.

213. (*1*) Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearah, that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years; and, until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Útbundi and hal-hasili systems.

214. Nothing in this Act shall affect the conditions customary or otherwise, under which land is held on either of the systems known as the "útbundi" system and the "hal-hasili" system.

215. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed. Section 226.

Saving as to service-tenures.

216. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom. Section 85.

Homesteads.

217. Nothing in this Act shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

*Illustration.*

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act. [C. B., s. 19. Expl. 4 (*f*), B. B., s. 19, Expl. 4 (*e*), proviso.] Section 4.

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## CHAPTER XVIII.

### LIMITATION.

218. (*1*) The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded. [D., §§ 77, 78, & 79. C. B., s. 92. B. B., s. 98.] Section 224.

Limitation in suits, appeals and applications in Schedule IV.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

219. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 218. [C. B., s. 93. B. B. s. 99.] Section 225. XV of 1877.

Portions of the Indian Limitation Act not applicable to such suits, &c.

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## CHAPTER XIX.

### SUPPLEMENTAL.

*Penalties.*

220. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force, [B. B., ss. 91, 122.]

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. XLV of 1860.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

*Agents and representatives of landlords.*

221. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord. Section 229. *Agents and representatives of landlords.*

Power for landlord to act through agent.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint-landlords to act collectively or by common agent.

*Powers of Revenue-officers.*

*Powers of Revenue-officers.* Section 227

Power to make rules regarding procedure and powers of officers.

223. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

*Rules.*

*Rules.* Section 228.

Procedure for making, publication and confirmation of rules.

224. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner: Provided that every such draft shall be published in the official Gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

*Provisions as to temporarily-settled districts.*

*Provisions as to temporarily-settled districts.* [C. B., ss. 6, Excep., & 17, Exception B. B., ss. 6, Excep., & 16, Exception.] Section 20.

Saving as to land held in a district not permanently settled.

225. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

[D., § 42.] Section 121.

Power to alter rent in case of new assessment of revenue.

226. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

*Rights of pasturage, &c.*

[D., § 82. C. B., s. 3. B. B., s. 3 "Rent" and "land."] Section 230.

Rights of pasturage, forest-rights, &c.

227. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

*Savings for special enactments.*

*Savings for special enactments.* [D., § 2. C. B., s. 4. Report of Rent Commission, § 3. B. B., s. 4.] Section 4.

Savings for special laws.

228. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates; or

(*e*) any other special or local law not repealed either expressly or by necessary implication by this Act.

## SCHEDULE I.

*(See Section 2.)*

REPEAL OF ENACTMENTS.

*Regulations of the Bengal Code.*

| Number and year. | Subject of Regulation. | Extent of repeal. |
|---|---|---|
| VIII of 1793 . . | A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprieters of land in Bengal, Bihár, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates. | Sections 51, 52, 53, 54, 55, 64 and 65. |
| XII of 1805 . . | A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Mednípur. | Section 7. |
| V of 1812 . . . | A Regulation for amending some of the rules at present in force for the collection of the Land-revenue. | Sections 2, 3, 4, 26 and 27. |
| XVIII of 1812 . . | A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof. | Preamble and sections 2 and 3. |
| VIII of 1819 . . | A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal. | The whole Regulation. |
| I of 1820 . . . | A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described. | The whole Regulation. |
| XI of 1825 . . . | A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea. | In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause. |

*Acts of the Bengal Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| VI of 1862 . . . | An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal. | The whole Act. |
| VIII of 1865 . . | An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof. | The whole Act. |
| IV of 1867 . . . | An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments. | The whole Act. |
| VIII of 1869 . . | An Act to amend the Procedure in suits between Landlords and Tenants. | The whole Act. |
| VIII of 1879 . | An Act to define and limit the powers of Settlement-officers. | The whole Act. |

## SCHEDULE I—*continued.*

*Acts of the Governor General in Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| XXV of 1850 . . | An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846. | So much as is unrepealed. |
| XXXIII of 1850 . . | An Act for amending the forms necessary for the sale of patní tenures in Bengal. | The whole Act. |
| VI of 1853 . . . | An Act relating to summary suits for arrears of rent, to sales of patní taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent. | The whole Act. |
| X of 1859 . . . | An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal. | The whole Act. |

## SCHEDULE II.

(*See section 3 (16).*)

*Extract from Preamble to Regulation VIII of 1819.*

"In the exercise of the privilege * * * conceded to zamíndárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamíndáris; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní taluqdárs: these, again, sometimes similarly underlet to be patnídárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

## FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village_____Tháná_____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

   *Nukdi* Bíghás_____Rs._____

   *Baouli* Bíghás_____Maunds_____or Rs._____

   *Sayer* { Bunkur Rs._____ / Julkur Rs._____ / Phulkur Rs._____ }

   Government Cesses { Road Cess / Public Works Cess }
6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) Rs._____
9. Signature of landlord or Authorized Agent

## FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village._____Tháná_____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

   *Nukdi* Bíghás_____Rs._____

   *Baouli* Bíghás_____Maunds_____or Rs._____

   *Sayer* { Bunkur Rs._____ / Julkur Rs._____ / Phulkur Rs._____ }

   Government Cesses { Road Cess / Public Works Cess }
6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) Rs._____
9. Signature of Landlord or Authorized Agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows :—

"69. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly."

Appropriation of payments.

"(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit."

| Date of Payment. | Nukdi. | | Baouli. | Sayer. | | Cesses. | |
|---|---|---|---|---|---|---|---|
| | Current. | Arrear. | Current. | Current. | Arrear. | Current. | Arrear. |
| | | | | | | | |

| Date of payment. | Nukdi. | | Baouli. | Sayer. | | Cesses. | |
|---|---|---|---|---|---|---|---|
| | Current. | Arrear. | Current. | Current. | Arrear. | Current. | Arrear. |
| | | | | | | | |

# FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

| | Bighás | Rate | Rs. | A. | P. |
|---|---|---|---|---|---|
| *Nukdi* | | | | | |
| Government Cesses | | | | | |

| | Bighás | Maunds | Rs. | A. | P. |
|---|---|---|---|---|---|
| *Baouli* | | | | | |
| Julkur . . . . . | | | | | |
| Bunkur . . . . . | | | | | |
| Phulkur . . . . . | | | | | |

| | Maunds | Rs. | A. | P. |
|---|---|---|---|---|
| 4. Demand of the year . . . . . | | | | |
| 5. Balance of former years (Bakaya) . . . . . | | | | |
| | | Rs. | A. | P. |
| 6. Total demand (current and arrear) . . . . . | | | | |
| 7. Paid each on account of { Current demand . . . . | | | | |
| Arrear demand . . . . | | | | |
| | Maunds | | | |
| 8. Paid in kind . . . . . | | | | |
| | | Rs. | A. | P. |
| 9. Balance outstanding at end of year | | | | |
| 10. Landlord's Signature | | | | |

# FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

| | Bighás | Rate | Rs. | A. | P. |
|---|---|---|---|---|---|
| *Nukdi* | | | | | |
| Government Cesses | | | | | |

| | Bighás | Maunds | Rs. | A. | P. |
|---|---|---|---|---|---|
| *Baouli* | | | | | |
| Julkur . . . . . | | | | | |
| Bunkur . . . . . | | | | | |
| Phulkur . . . . . | | | | | |

| | Maunds | Rs. | A. | P. |
|---|---|---|---|---|
| 4. Demand of the year . . . . . | | | | |
| 5. Balance of former years (Bakaya) . . . . . | | | | |
| | | Rs. | A. | P. |
| 6. Total demand (current and arrear) . . . . . | | | | |
| 7. Paid each on account of { Current demand . . . . | | | | |
| Arrear demand . . . . | | | | |
| | Maunds | | | |
| 8. Paid in kind . . . . . | | | | |
| | | Rs. | A. | P. |
| 9. Balance outstanding at end of year | | | | |
| 10. Landlord's Signature | | | | |

## SCHEDULE IV.

LIMITATION.

(*See Section 218.*)

PART I.—*Suits.*

| Description of Suit. | Period of Limitation | Time from which period begins to run. |
|---|---|---|
| 1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach. | One year . . | The date of the breach. |
| 2 For the recovery of an arrear of rent— | | |
| (*a*) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 73. | Six months . | The date of the deposit. |
| (*b*) in other cases . . . . | Three years . | The last day of the Bengáli year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amlí or Faslí year in which the arrear fell due, where either of those years prevails. |
| 3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat. | Two years. . | The date of dispossession. |

PART II.—*Appeals.*

| Description of Appeal. | Period of Limitation. | Time from which period begins to run |
|---|---|---|
| 4. From any decree or order under this Act to the Court of a District Judge or Special Judge. | Thirty days . | The date of the decree or order appealed against. |
| 5. From any order of a Collector under this Act to the Commissioner. | Thirty days . | The date of the order appealed against. |

PATR III.—*Applications.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding R500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree. | Three years . | (1) The date of the decree of order; or<br>(2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or<br>(3) where there has been a review of judgment, the date of the decision passed on the review. |

No. 784, dated 5th May, 1884.

*From*—D. FITZPATRICK, Esq., *Secy. to the Govt. of India,* LEGISLATIVE DEPT.,

*To*—*The Secretary to the Government of Bengal.*

I AM directed to invite your attention to the Preliminary Report (including the dissents) of the Select Committee on the Bengal Tenancy Bill and to the revised Bill recently published in the *Gazette of India,** and to request that the Report and the Bill may be taken into consideration by the Government of Bengal as soon as possible, in order that the Government of India may be made acquainted with the views of the Bengal Government on the revised

* See *Gazette of India* for 29th March and 5th and 12th April.

Bill and of those officers whom the Bengal Government may consider it expedient to consult.

2. In concluding their Report, the Select Committee specify several points with which they were unable to deal adequately without further information than that contained in the papers before them. And they state that on some of these points they would be glad to receive the advice both of the Local Government and of the High Court. A separate communication will be addressed to the High Court. The particular questions which the Select Committee wish to be referred to the Local Government are—

(1) Whether, with reference especially to landlords' improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation; and, if so, what form such provisions should take?

(2) Whether the summary sale procedure can be applied to those dependent taluqs the revenue of which was settled direct with Government, though the holders pay it through the zamíndár, who is responsible for its realization. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patní* procedure should be applied to them.

(3) Whether the same procedure can be made applicable also to the recovery of arrears of road-cess and public works cess from rent-free tenure-holders.

(4) Whether any provisions are required in the Bill with respect to tenants of homestead or *bastu* land which is not a part of an occupancy-holding. The Select Committee have omitted Chapter VII of the Original Bill, on the ground that it was inapplicable to the very varying conditions attaching to the holdings of such tenants in different parts of the country, and that they had not before them the information requisite to dealing with the questions involved. It is desirable that information of this description should, if possible, be supplied.

(5) Whether the saving of customary and other conditions specifically applied in section 214 of the revised Bill to *utbandí* and *hal-hasilí* tenures should be extended to similar tenures under other names; and whether any special saving is necessary in regard to the special tenures under which land is held in the Chittagong Division.

(6) Whether it would be possible to specify for the purpose of exemption from the pre-emption sections any such transferable occupancy-rights as those in *guzáshta* and *gorá* holdings.

(7) Whether it is possible to improve the accuracy of the price-lists which have been published during the past twelve years; and what would be the probable effect of basing a system of enhancement of rent mainly on these lists.

3. To these points the attention of the Government of Bengal is especially invited. It may be that the first of them would require separate legislation; but, as they have been referred at the instance of the Select Committee, it would be desirable that the opinion of the Bengal Government upon them should be given in reply to this letter. I am further to mention some other matters on which either the opinion of the Government of Bengal is particularly required or an expression of the views of the Government of India seems desirable.

4. The first question concerns the sufficiency of the revenue-establishments of the Province to discharge, in addition to their present onerous functions, the numerous duties which, under the revised Bill, will devolve upon them. They are required, for instance, (1) to ascertain the prevailing rate by local inquiry at the instance of a Civil Court before which an enhancement-suit under section 44 is brought; (2) to prepare authoritative price-lists under section 52; (3) to receive deposits of rent (section 73); (4) to appoint officers to superintend the division of the produce where rent is taken by appraisement or measurement (section 82); (5) to decide the respective rights of landlord and tenant to make an improvement, or whether any particular work is an improvement (section 89); (6) to register landlords' improvements, and to record evidence respecting any improvement (sections 91 and 92); (7) to grant permission to measure the holding of a tenant (section 99); (8) to prepare a record-of-rights or to make a settlement of rents (Chapter X); (9) to frame tables-of-rates (Chapter XI); (10) to survey and record a proprietor's private lands (Chapter XII); (11) to determine the incidents of a tenancy by means of a local inquiry at the direction of a Civil Court (section 174). This list does not exhaust the duties delegated to Revenue-officers; but it is sufficiently full to show that the efficient working of the Act will in a great measure depend on the ability of the revenue-establishments to respond to the calls which will be made upon them. Some of the duties,—as, for instance, the preparation of a record-of-rights or of a table-of-rates, or the settlement of rents,—will probably arise only in exceptional localities, and may require the employment of special establishments. Others, however,—such as the registration of improvements or local inquiries into the prevailing rate,—will not improbably be frequent throughout the Province; and the Government of India would like to know whether the existing revenue-establishments can cope with the work, or whether it will be necessary to strengthen them, if the Bill be passed in its present form. In connection with this subject, I am to invite the attention of His Honour the Lieutenant-Governor to paragraph 19 of the Secretary of State's despatch No. 30 of 17th August, 1882, dealing with the question of introducing a system of survey and record-of-rights either generally into Bengal or experimentally into the Patna division. The Government of India is anxious that a complete statement of the Lieutenant-Governor's views and proposals on this subject, and as to the necessity of

providing further legislative facilities for it beyond those which are given in the Bill under consideration, should be submitted.

5. Passing from this general question of administrative machinery to the most important alterations made by the Select Committee in the Bill as originally introduced, I aim to notice the following points:—

6. *Tenure-holders* (Chapter III).—The description of tenure-holders and raiyats, which is given in Chapter II in place of a definition, is believed to represent substantially the views expressed by the Government of Bengal in its letter No. 972 of 27th September last, although it was not deemed expedient to draw the line between the two classes of tenancies with the precision and definiteness which was there recommended. The Bill, it is understood, requires the Courts, in deciding whether a tenant is a tenure-holder or a raiyat, to look in the first instance to the primary object for which the tenancy was acquired,—whether for collecting rent, or for cultivating the land,—and in doubtful cases directs their attention to local custom. But in case these issues cannot be adequately ascertained, it provides a presumption, which is doubtless in accordance with existing facts, that holdings exceeding 100 bíghás were taken for the former purpose. The Government of India will be glad to learn if these provisions will afford reasonable facilities for meeting what is clearly felt to be a grave practical difficulty in deciding what holdings are, and what are not, tenures. The most doubtful feature of the scheme is the proposed conversion of occupancy-raiyats who sublet more than one-half their holdings, subject to certain exceptions, into tenure-holders (section 37). The object is to bring the subletting raiyat under the more summary sale procedure of Chapter XVI, and at the same time to allow the sub-tenant to acquire occupancy-rights. The Report of the Select Committee in its comments on Chapter V discusses these provisions at some length, and touches on the practical difficulties which may be anticipated to arise. To these remarks the attention of the Government of Bengal is invited. It will be noticed that the converted tenure-holder still remains liable to enhancement of rent as an occupancy-raiyat, though in other respects he acquires the rights and liabilities of a tenure-holder, and is in some ways, especially as to pre-emption and distraint, in a better position than if he had never sublet. The expediency of giving these privileges as part of a scheme for discouraging subletting and the general effect of this distinction should be considered; and it would be well if local inquiries were made as to the practicability of the scheme, and as to the possibility of giving effect to it by means of a system of registration as contemplated by the Bill. The obvious objections that it is difficult to ascertain if a man has sublet half his holding, and that it may be neither to his own interest nor to that of anyone having a knowledge of the facts that he should be registered, require to be carefully weighed and, if possible, overcome.

7. *Raiyats holding at fixed rates* (Chapter IV).—The assimilation of this class of raiyats to tenure-holders with respect to transfer and succession is a provision about which the Select Committee were not unanimous. It has been urged that, while these conditions may very fairly be allowed to raiyats holding at fixed rates under a registered lease or under a judicially declared title, they should not be claimable by raiyats whose right to hold at fixed rates rests only on the statutory presumption. It was the opinion of the Select Committee that no distinction can be drawn in the Bill between these two classes; but it is open to consideration whether some further restriction might not equitably be placed on the twenty years' presumption, in addition to that proposed in the proviso to sub-section (2) of section 64 and in section 122. The Government of India is disposed to think that, subject to restrictions, the presumption should be retained. The presumption was originally enacted in Act X of 1859, in order to facilitate the proof of certain well-recognized rights. To remove it entirely from the Statute-book would throw on the tenant claiming to be a fixed-rate tenant the burden of proving that he had held at the same rent from the time of the Permanent Settlement; and this, in the absence of public and authoritative registers of tenancies, would be equivalent to an absolute bar to every claim of this nature. Other proposals have now been made with a view of limiting the currency of this presumption: they are (1) to provide facilities for registering such tenancies and for deciding the disputed claims to which registration is certain to give rise, and to prescribe that no tenant whose title to hold at fixed rates is unregistered after a certain date, to be fixed by the Act, can claim the benefit of the presumption; or (2) to enact that the presumption shall not continue to run after the passing of the Act, or after some subsequent date, so that the raiyat claiming to hold at fixed rates must, in order to have the benefit of his presumption, be prepared to show that for twenty years previous to the date thus fixed (instead of previous to the date of institution of the proceedings) he has held at an unchanged rate. The attention of the Government of Bengal is requested to these suggestions, as there cannot be a doubt but that the presumption being cumulative, every year renders it less in accordance with the real facts, and also increases the landlord's difficulty of rebutting it.

8. *Occupancy-raiyats* (Chapter V).—A preliminary question is raised by the Select Committee as to the definition of "estate" with reference to exceptionally large estates, such as those of the Mahárájá of Burdwan. The Select Committee also invite attention to the date provisionally given in section 27 (*b*). These points should now be considered by the Government of Bengal.

9. The Select Committee also remark that the main lines of the original Bill in regard to the acquisition of the status of a settled-raiyat and the right of occupancy have been retained; while considerable alterations have been made in the provisions relating to the enhancement of the rent of occupancy-raiyats. The whole of this chapter will, no doubt, be fully considered by the Government of Bengal, and the effect of the minor amendments introduced into it

should receive careful attention. The presumption introduced in section 26, sub-section (2), is, it is believed, quite in accordance with existing facts. It has been said by a leading opponent of the Bill that 90 per cent. of the raiyats of Bengal have occupancy-rights: the practical difficulty, however, has always been for them to prove these rights. The object of the presumption is to facilitate this proof by throwing the *onus probandi* on the party asserting the case to be an exception from the general rule. From this point of view the Government of India accepts it as an improvement of the Bill. Other important features in the early portion of the chapter are the subdivisions entitled "Restrictions on transfer" and "Restrictions on subletting," and the omission of section 56 of the original Bill, which conferred a right of occupancy on a raiyat let into an occupancy-holding after it had been bought up by the landlord. Of these, the restrictions on subletting have already to some extent been discussed. It is understood that the universality of the practice both in Bihár and in Bengal rendered the prohibition of the practice impossible; and, as the Committee point out, the attempt to place restrictions upon it has been attended with extreme difficulty. It is not probable that any satisfactory solution of the problem can be found in the direction of increased stringency. The provisions of section 56 were very generally condemned in the papers before the Select Committee. The Government of India concurs in the omission of this section from the Bill, though it is obvious that the absence of such a restriction may have the effect of enabling the more wealthy landlords to diminish by purchase the area held by tenants in occupancy-right, and may also afford a means of raising the customary or prevailing rate of rent over the occupancy-area. The former advantage, however, will only remain to the landlord as long as he retains the land in his own cultivation. If he lets it, the ordinary provisions as to the acquisition of occupancy-rights will apply to the incoming tenant; and it is believed that these will be found sufficiently broad for all practical purposes. The possible effect of the omission of the section on the prevailing rate is, no doubt, a more serious consideration. The landlord who buys up the occupancy-right in a holding may either let the land to a non-occupancy-raiyat at any rent he likes (section 56), or to a settled raiyat subject (see section 42) to such enhancement on the rent paid by the late occupancy-raiyat as is permissible under section 41. Should this power be extensively exercised on an estate where the competition for land is keen, the higher rents obtainable for such land by the landlord would eventually tell on the prevailing rent, and would enable the landlord to enhance the rents of the general body of occupancy-tenants on the ground that they were below the prevailing rate of rent. The Government of India is, therefore, prepared to admit that the omission of section 56 may occasionally operate unfavourably towards the occupancy-raiyat by allowing in certain cases (especially in connection with the effect of section 42 on an occupancy-raiyat succeeding to the tenure of a non-occupancy-raiyat) room for the entry of competition-rents. But, admitting this, the Government of India cannot but recognise the force of the objections which were brought against that section of the original Bill from the opposite point of view, and is disposed to think that justice to the landlords required the modification of the Bill in this particular. Your attention, however, will be more specially directed to the effect of section 42 in a subsequent portion of this letter. The only remaining restriction which affects the acquisition of occupancy-rights by the landlord is that in section 28, which declares that the occupancy-right so acquired merges in the superior right of the landlord. It allows the accrual of occupancy-rights by the lapse of time to the new tenant, prevents the legal complications which would arise from the co-existence of different interests in the same person, and merely affirms what appears to have been assumed by the Judicial Committee of the Privy Council, in the case referred to in Mr. Justice Field's note on this subject, to be the existing law. The section, it will be noticed, applies whether the landlord is the zamíndár or a tenure-holder.

10. The alterations made in the law of enhancement in the latter portion of Chapter V are set out in detail in the Report of the Select Committee, and the Government of India will only direct attention to one or two points. The omission of the section limiting money-rents to a maximum of one-fifth of the gross produce may perhaps give rise to some misgivings, and it may be said that with this section the only absolute check on rack-renting has been removed. On the other hand, many objections have from the first been taken to this provision of the original Bill. It has been condemned as setting up a maximum rate of rent which might possibly be suitable in a particular locality in regard to particular crops, but which would certainly work inequitably as a uniform standard for all classes of crops and in all districts. Thus, in the poorest lands it might leave an insufficient margin for the subsistence of the cultivator, whilst on the best lands it might give him more than he is entitled to get. It has also been condemned as likely to encourage enhancements of rent in all cases in which the rent was below the legal maximum. It has been further condemned as economically vicious, because it leaves out of view the enormously important element of cost of cultivation, and, again, because it professes to lay down as a permanent standard of the maximum rent a proportion of the gross produce, which circumstances, such as the increasing pressure of the population, may make it difficult to maintain. But the most serious objections lay in the notorious difficulty of ascertaining by the agency at the disposal of the Courts either the average produce of different classes of land, or the produce of the particular fields of which the rent was in question; and this latter difficulty is greatly increased by the provision that the average gross produce of the field was to be calculated in staple crops, whatever might be the special crop grown on the land in question. The problem has been repeatedly attacked by experts in connection with the land assessment of temporarily-settled provinces, and the results of their elaborate inquiries have been so conflicting and of so little practical value that the Government of India will not contest the expediency of omiting the gross produce test from the law of enhancement in Bengal.

In the Bombay Presidency, experiments have for years past been made by Revenue-officers with the view of ascertaining the proportion borne by the land-assessment to the gross produce. The report of the Director of Agriculture on the experiments for 1882-83 has recently been communicated to the Government of Bengal; it should be referred to as well illustrating the difficulty of the enquiry, and the impossibility of establishing any certain relation between the produce and the rent or revenue. First of all, the produce of particular fields has to be ascertained by actual experiment. Then inquiry has to be made whether the produce is exceptionally large owing to the exceptional character of the cultivation, or exceptionally small owing to previous cropping or accidents of weather. Then comes a difficult inquiry into the prices obtained by the cultivator and the value of the produce. At every stage there is room for much difference of opinion; and the data obtained from the several experiments are too conflicting to lead to any certain conclusion as to the average value of the produce of different classes of land. The same difficulty was felt in the case of the Khurdá Settlement, which was recently referred for the orders of the Government of India by the Government of Bengal. The Settlement-officer of Khurdá was certain that his assessment took less than one-fourth of the value of the gross produce; but his estimate, and the data on which it was founded, were considered of doubtful accuracy by the Government of Bengal. But even if average standards of produce could be ascertained, the fact remains that rent bears no fixed relation to the gross produce. The cost of cultivation is quite as important a factor as the gross produce; and if one fact is clearly brought out by inquiry, it is the impossibility of ascertaining the cost of cultivation with any degree of accuracy.

11. These are some of the considerations which have led the Government of India to agree with the Select Committee that the gross produce test should be abandoned. The Government of India is also inclined to agree with the Select Committee that, failing this test, the most feasible check on rack-renting is to limit the percentage of increase obtainable at any one time on existing rents when rent is enhanced either by private agreement or by suit. There is an additional reason for fixing a limit on the percentage of increase; and this is that, whatever the land can afford to pay, it is certain that under existing circumstances in India the ordinary raiyat cannot bear a very large and sudden increase in his rent without the risk of a material deterioration of his agricultural stock and means of living. Great importance is attached by the Government of India to this consideration, in connection with periodical re-assessments of land-revenue. The propriety of the several percentage limits of enhancement specified in the revised Bill, and also the other incidents which the Bill attaches to agreements out of Court to pay a higher rent, are points which may profitably be considered by the Government of Bengal. In other provinces an increase of 25 per cent. in the course of 30 years' settlement is at the present day looked upon as considerable. The Bill allows what is equivalent to 50 per cent. in this term in most cases, and in some circumstances as much as 100 per cent.

12. Before leaving this subject, I am to invite attention to the provisions of section 42. Fears have been expressed lest the rule under which an occupancy-raiyat let into land hitherto held by a non-occupancy-tenant has to pay the same or even under contract an enhanced rent, may have an extensive effect in the direction of raising the prevailing rate of occupancy-raiyats. The landlord, as noticed in paragraph 9, may, on acquiring an occupancy-holding, re-let it to a non-occupancy-tenant at a competition-rent. And should it again fall vacant, any occupancy-tenant of the estate, who may then be let in by the landlord, will be bound to pay this rent The tendency of these provisions to raise the prevailing rate has been urged by Mr. Reynolds in his dissent, and His Excellency in Council would be glad to receive an expression of the Lieutenant-Governor's opinion as to whether the anticipated danger is not such as to require some safeguard, and should this be the case, in what way it might best be met.

13. The effect of the alterations which have been made in the grounds on which an enhancement-suit can be brought should also receive close attention. The most important points are—(*a*) the restriction of enhancement on the ground of increased productivity to the two separate cases of fluvial action and landlords' improvements; (*b*) the method proposed for determining enhancements on the ground of a rise in prices. In regard to (*a*), it should be considered whether the scheme for registering landlords' improvements which the Bill provides (sections 91-92) is sufficient for the purpose, and whether there are any other cases besides the two specified in the Bill in which enhancement should be allowed on the ground of an increase in the productive powers of the soil. The Government of India is disposed to agree with the Select Committee that this ground of enhancement will be difficult to work except in the special case of landlords' improvements, in respect to which the requisite information can, to some extent, be obtained by means of registration. In regard to (*b*), the explanatory remarks of the Select Committee should be considered. Their intention is that authoritative price-lists of staple food-crops should be prepared by the Local Government, and that in deciding an enhancement-suit on the ground of an increase in prices the Courts should have regard to these lists as indicating a general rise or fall in prices in any local area without any reference to the particular crop grown on the land the rent of which is in dispute. When a general rise has thus been ascertained, it would rest with the tenant to prove any particular causes which may have prevented him from enjoying the full benefit of the rise. The general tendency of these provisions would be that, so far as this particular ground of enhancement is concerned, the standard of rent as expressed in grain would not vary, but the landlord would be protected from the loss now arising from the diminished purchasing power of silver in relation to grain. The Government of India agrees with the Select Committee that these proposals would very materially facilitate the decision of this class of enhancement-cases, and con-

siders also that the zamíndárs are entitled to some substantial improvement in the procedure for obtaining enhancements of rent in such cases. In many parts of Bengal the rise in prices of recent years has been very considerable, and the complaints of the zamíndárs that under the present law they have been unable to obtain a proportionate increase of rent are admitted to be well-founded. If the present proposals of the Select Committee are calculated to work equitably, the Government of India would be glad to see them enacted, as they go far to redeem the promises which have been made at various times to the zamíndárs. They are, however, not free from difficulties and objections, some of which may here be indicated. The first difficulty will occur in the selection of the staple crop or staple crops for each district, and on this point the opinion of the Government of Bengal and its local officers is very desirable. Is it possible to select in each district one or more staples which are so generally cultivated as to be fairly indicative of the agriculture of the tract? The Select Committee have restricted the staples to food-crops; the objection to the inclusion of other staples such as jute and indigo being that they are grown for export in place of food-crops, and are subject to such great fluctuations in prices as to afford no reasonably stable standard of comparison. If staple crops can be selected, it will then be necessary to ascertain whether trustworthy price-lists for past years exist or can be now prepared, and what arrangements are possible in the future. Assuming that these points can be satisfactorily settled, the practical effect of the proposed method of enhancement should be considered. Is it safe to presume, in the absence of evidence to the contrary, that because the price of the staple crop of a district has increased in that district by 20 or 30 per cent., the gross value of the crops produced on any particular holding has increased in the same proportion? And, if this inference be fair, is it further permissible to assume that the rent may be enhanced in exact proportion to the rise in prices, or should some deduction be made to cover the increased cost of production? An increase in prices, again, may possibly be due to temporary or local causes, as, for instance, recurring bad harvests in the tract itself or in adjoining tracts. Can the price-lists be made to distinguish the permanent from the temporary rise in prices, and the occasions when the tract has benefited from the rise from those when it has suffered, or must this be left to the discretion of the Courts? Lastly, is the fluctuation of prices recorded at the head-quarters of a district or a sub-division a true index to the fluctuations which attend prices obtained by the cultivator in his village? These are some of the questions which require to be considered in connection with the scheme. They point to the impracticability of devising any method of enhancement that can be worked in a purely mechanical way. And this the Bill admits by the provision requiring the Courts not to decree any enhancement which is unfair or inequitable. The question, therefore, which the Government of India would have the Government of Bengal consider is whether this provision is sufficient to guide the Courts in applying the price-lists in enhancement-suits, or whether any other considerations to which the Courts ought to have regard should be more definitely stated in the Bill.

14. The provisions for commuting grain-rents to money-rents also demand attention. In regard to the method of commutation, it would probably be desirable that the officer should ordinarily look to the analogy afforded by the prevailing money-rents for similar land, but that the result should be checked by the average rent which the landlord has hitherto received —in other words, by the test of experience. If the latter alone were to be regarded, it is obvious that, as Mr. Reynolds points out, a deduction should be made for the risks and other burthens which the tenant assumes in undertaking a money-rent; but if the prevailing money-rent is taken as the primary guide, these risks and burthens will *ex hypothesi* have been ordinarily discounted. The provisions, therefore, seem to the Government of India to be fair and equitable; but His Excellency in Council will be glad to receive the Lieutenant-Governor's views on the point

15. *Non-occupancy-raiyats* (Chapter VI).—The point on which most difficulty will be felt as regards this class of raiyats is the omission from the Bill of all restrictions on the rent which a landlord may demand from the raiyat on his first entry upon a holding. The Government of India, as already said, agrees with the Select Committee as to the necessity for abandoning a maximum rate of rent fixed in terms of the gross produce, and is inclined also to think that the Bill goes sufficiently far in protecting the non-occupancy-raiyat during the period in which he is acquiring rights of occupancy. The great safeguard for raiyats of this class will lie in the broad basis on which the occupancy-right is constituted by the Bill. and in view of this the Government of India would be prepared to accept the proposals of the Select Committee. But before coming to a final conclusion on the matter, it would be glad to learn the views of the Government of Bengal. The Government of India accepts the proposal of the Committee to give the non-occupancy-raiyat when enhancement is demanded a five years' lease at a judicial rent as a substitute for compensation for disturbance. This provision also serves to some extent to secure the object of the abandoned maximum based on a proportion of the gross produce, and affords the non-occupancy-raiyat a better chance of acquiring occupancy-rights under the 12 years' rule; though, as he remains liable to ejectment at the end of the five years' term, it gives the landlord the opportunity of getting rid of a bad tenant if he chooses.

16. The Lieutenant-Governor's opinion as to the sufficiency of the protection given to under-raiyats in Chapter VII is also requested. It will be remembered that when an occupancy-raiyat by subletting becomes a statutory tenure-holder, his immediate tenants become raiyats, and this chapter thereupon ceases to apply to them.

17. *General provisions as to rent* (Chapter VIII).—The only alteration in the chapter to which the Government of India would specially direct attention is the definition in section 83 of the respective rights and liabilities of landlord and tenant as to the possession of the crop

where rent is taken by appraisement or division of the produce. It should be ascertained whether this definition is exhaustive, and whether it conforms to practice and custom. The opinion of local officers, especially in South Bihár, would be valuable as to the sufficiency of the provisions (sections 81-83) which deal generally with produce-rents.

18. *Miscellaneous provisions as to landlords and tenants* (Chapter IX).—The registration-procedure in respect to landlords' improvements which this chapter provides has already been noticed, and another point to which attention is invited is the manner in which the Select Committee have attempted to solve the very difficult question of abandonment by a tenant. The Government of India is disposed to accept the section (section 96) as the fairest way of dealing with the conflicting interests of landlord and tenant in such cases. The Lieutenant-Governor's opinion is further invited to the provision of section 101 (standards of measurement) and to the criticisms of the dissentient members of the Committee on the sections relating to the appointment of managers. The chief objections taken to the sections last mentioned are that the law which they are intended to re-enact is practically obsolete, and that they are unnecessary in the present state of society. On the other hand, the Government of India observes that these provisions were very generally approved by the District-officers who reported on the original Bill.

19. *Record-of-rights and settlement of rents* (Chapter X).—In this chapter the first point which should be considered is whether the powers conferred or conferrable on the Revenue-officer charged with the preparation of the record-of-rights are sufficient for the purpose in view. The Revenue-officer must have authority to compel parties to attend to give evidence, to point out boundaries, and to otherwise assist him in his inquiries. He must also have power to enter upon, survey and demarcate land, and to examine its character and productive powers. Under section 223 the Local Government is competent to confer certain powers on Revenue-officers, and these will probably be sufficient for the purpose, but it would be well if the provisions of the Bill in this respect were carefully examined by an officer versed in settlement-procedure. It should also be considered whether the particulars to be included in the record are stated with sufficient fulness in section 111. As the enumeration there given is not exhaustive, the Local Government in issuing an order under the section would be able, if necessary, to add to or vary it. If, however, there is any obvious omission, it might be well to correct it.

20. The second question concerns the important change which has been introduced into the procedure for framing the record-of-rights. All undisputed entries will simply be presumed to be correct in any future proceeding between the parties until the contrary is proved. Disputed entries will be decided by the Revenue-officer according to the regular procedure of a Civil Court, and his decision will have the force of a decree. As regards the undisputed entries, the Government of India agrees with the Select Committee as to the undesirability of attaching more than a disputable presumption to them. As to disputed entries, however, the Government of Bengal should consider whether the Revenue-officer is capable of disposing in the manner provided of every class of case which may arise, or whether he should have the power to refer any case of special difficulty or importance to the ordinary Civil Courts. It should also be considered how the proposed appointment of a special Judge or special Judges to hear appeals from the Revenue-officer is likely to work in practice, especially where the paucity of such cases would render it undesirable to appoint a separate officer for the work. The Government of India would like to have some indication of the way in which the Government of Bengal would propose to give effect to this provision. The Select Committee evidently contemplate that the special Judge or Judges should be familiar with the local agricultural system, and should also be judicially qualified for the office. And the point for the Local Government to consider is whether these requirements can be adequately satisfied.

21. Passing new to the sub-chapter *Settlement of Rents*, the Government of India would invite attention to three points—(1) the appellate procedure as described in the Report of the Select Committee; (2) the restriction of the Settlement-officer's powers in regard to the alteration of existing rents; (3) the prohibition of enhancement-suits for a term of 15 years after the preparation of the rent-roll. As regards the first point, the Government of India will not add anything to the remarks of the Select Committee, but would like to have the opinion of the Government of Bengal on the proposal. As regards the second and third points, it will be noticed that the Settlement-officer will exercise no powers with respect to the rents of non-occupancy-tenants or of sub-tenants beyond recording existing facts: with respect to the rents of occupancy-tenants and tenure-holders, his powers are similarly restricted, unless an application that the rent should be altered is made by either landlord or tenant. But whether any alteration is made or not in the rent of an occupancy-tenant or tenure-holder, the rent recorded by the Settlement-officer is not to be enhanced during a term of 15 years, except on the ground of a landlord's improvement or of an alteration in the area of the holding. This provision has been objected to from the landlord's point of view, and its equitableness should be carefully considered. The obvious advantage of the provision is that it secures the settlement of rents throughout the area by a specially qualified officer with special facilities for dealing with this class of cases; and it can be defended on the ground that, as the landlord is given the opportunity of enhancing by means of a special Court the rent of any occupancy-holding which seems to be held at an unduly low rent, he may be trusted to avail himself of this power, and all rents which he is content to leave as they are may be presumed to be adequate, and as such suitable to be confirmed for a term of years. On the other hand, one of the objections taken is that litigation is stimulated and enhancement-suits forced on, which the landlord would otherwise have been willing to postpone. That there is some force in this must be

admitted; but looking to the fact that a settlement of rents will not be undertaken unless the relations between landlord and tenant are unsatisfactory and litigation is impending, the Government of India is disposed to accept the proposals of the Select Committee as, on the whole, most favourable to the true interests of both parties. It may be well to notice that, as the Settlement-officer will have no power to alter the rents of non-occupancy-tenants, the ordinary provisions of Chapter VI as to enhancement will continue to apply to them, notwithstanding a settlement of the rents of the occupancy-tenants. Your attention has already been called in paragraph 4 to the Secretary of State's remarks regarding the general introduction of a survey and record-of-rights, and the Government of India would be glad to learn in what way and to what sort of areas the Lieutenant-Governor thinks it would be expedient to apply the procedure which the Bill provides for making record-of-rights and settlement of rents.

22. *Tables-of-rates* (Chapter XI).—The Select Committee have explained that, though the procedure under this chapter with only a few minor alterations has been retained, its use will probably be confined to special tracts, and it is no longer so important a feature in the Bill as it was in the original draft. The practical utility of the table in any tract is the question which the Government of India would now like the Government of Bengal to consider. Assuming that it is found possible for a Revenue-officer to frame rates of rent for different classes of land, and that these rates are, on the whole, equitable, it is certain that, if the land can be brought under the right class, the procedure of the Courts will be very greatly facilitated; but there still remains the difficulty that the Civil Court may often have to ascertain by local inquiry to what class or classes of land the holding belongs when a suit to enhance the rent is instituted under section 134. If the land is of fairly even quality, or falls into clearly marked classes, there may be no room for a dispute on this point. But if this is not the case, and the tenant contests the landlord's classification, the local inquiry might be charged with delicate questions of land valuation, and it is no disparagement of the Civil Courts to say that they have rarely at their command subordinate agents capable of discharging these duties satisfactorily. These difficulties are by no means conclusive as to the inutility of the table-of-rates, but they seem to deserve consideration.

23. *Record of proprietors' private lands* (Chapter XII).—With this chapter should be read section 30, which in its restriction of the accrual of occupancy-rights in this class of lands is understood to be in literal conformity with the existing law. The combined description and definition of this class of lands which the Select Committee have substituted for the definition in the Bill will so far meet the landlord's objections in that they allow greater weight to be attached to local custom by the Court or officer engaged in determining what are private lands. The assumption also that all land must be either *khámár* or *raiyatí* has been excluded from the Bill. The Government of India is disposed to accept the Select Committee's solution of a very difficult question. It will be noticed that by section 30 the acquisition of occupancy-rights in land recorded as *khámár* or *zirát* is not prevented when the tenant holds otherwise than on a lease for a term of years or on a lease from year to year.

24. *Distraint* (Chapter XIII).—The Select Committee have substantially retained the provisions of the original Bill with the minor alterations specified in their report. They have not, on the one hand, seen their way to reverting to the procedure of the present law as advocated by the landlords, nor have they accepted the suggestion of the Government of Bengal to abolish distraint altogether with respect to occupancy-raiyats while retaining it in its present form (though with sharper penalties in the case of abuse) for non-occupancy and *korfa* raiyats. The Government of India is satisfied that, if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zamíndárs' servants, and the reference to the Courts is an essential safeguard. It would be well, however, for the Government of Bengal to examine what foundation there is for the criticism that the delay caused by obtaining the aid of the Court before the first step to distrain can be taken must deprive the process of its utility. In considering this point the effect of the new provision enabling an *interim* order to be issued by the Court (section 141 (3)) should not be overlooked. As regards the former proposal to abolish distraint in the case of occupancy-tenants, the Government of India is inclined to doubt the universal correctness of the argument that in the saleability of the occupancy-right the landlord has perfect security for his rent, the occupancy-right must vary greatly in value in different districts; and where the population is sparse and land abundant, it may very possibly be saleable. It would seem, therefore, that the process of distraint should apply to both classes of raiyats. It has, moreover, been suggested that in the case of an improvident peasantry a remedy against the crop may be a more humane process than the remedy against the land. For these reasons the Government of India would be willing to consider any suggestions for still further improving or cheapening the procedure adopted by the Select Committee, and, with reference to the doubts above expressed as to the effects of delay, commends the question specially to the consideration of the Government of Bengal.

25. *Judicial procedure* (Chapter XIV).—The several questions in connection with this chapter on which the Select Committee specially desire to have the advice of the Bengal Government have already been noticed. The specific proposal put forward by the zamíndárs with the view of shortening the procedure in rent-suits was that a landlord should be permitted to institute a collective suit against any number of tenants belonging to one village by means of a single plaint. The advantages claimed for this procedure appear to be (1) the reduction in the stamp-duty and possibly in pleader's fees; (2) the possible reduction of process-fees, as the notices could be served by one process-server on the same date on all the defendants, and possibly also on the plaintiff's witnesses; (3) the hearing of the cases on the same date. It is obvious that all advantage from this procedure ceases from the appearance of the parties in

Court. Each case would have to be heard separately, and would srequire a separate decree and separate execution-process. The merits of the scheme are thus very limited; but as the zamíndárs have laid much stress on it, the Government of India would like it to be carefully considered by the Government of Bengal. It may, however, be observed that the advantages claimed for the scheme might, to a great extent, be obtained by executive orders under the existing law. The stamp-duty on rent-suits might, for instance, be reduced, and a lower scale of fees prescribed for processes issued on the same day on persons residing in the same village. It must, however, be borne in mind that any proposal te reduce court-fees, either generally or in rent-suits, cannot be considered with exclusive reference to Bengal.

26. The possibility of facilitating the service of the summons might also be considered, and the Government of India, as already mentioned, proposes to ask the advice of the High Court on this chapter. But it will gladly welcome any suggestions which local officers may offer for attaining the object of a speedier and cheaper method of recovering arrears, provided always that it does not jeopardise the raiyat's right to have his case fully heard, and that it does not require him to pay money into Court before his liability to pay is established. The Committee aim at securing an important and very necessary reform by the provision of section 164. It is desirable to know if in the opinion of local officers the section is sufficient to fulfil this purpose.

27. By Chapter XVI the method of summary sale is made applicable to tenures other than *patní* tenures which may hereafter be registered. It is expedient that no time should be lost in considering this scheme for registering tenures, so that, if it be found feasible, it may be introduced into the Bengal Council at an early date.

28. The remaining chapters of the Bill, though they require to be carefully examined by the Government of Bengal, do not call for detailed remark in this letter. There is one point, however, in Chapter XVII (*Contract and Custom*) to which reference may be made. By section 210 (*b*) a raiyat is prevented from contracting himself out of the incidents of the occupancy-right specified in section 31, and among these incidents is the right of transfer. The Government of India has refrained from re-opening in this letter the much-discussed question of the expediency of conferring the right of transfer on the occupancy-raiyat. The question was fully considered by the Government of Bengal in its letter of the 27th September, and the Select Committee have adopted the view there set forth. It has, however, been urged by the zamíndárs that the raiyat might at least be given the power of contracting himself out of this right, and that by means of such a provision a landlord could prevent the acquisition of occupancy-holdings by money-lenders and speculative land-jobbers. Such a provision is open to numerous objections, but the suggestion, as well as the similar suggestion that a raiyat should be allowed to contract himself out of the right to sublet, may be brought to the notice of His Honour the Lieutenant-Governor.

29. In conclusion, I am to request that the reply to this letter may be so sent as to reach this Government not later than the end of August.

I have the honour to be,

SIR,

Your obedient servant,

D. FITZPATRICK,

*Secretary to the Government of India.*

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No. 1906T.—R., dated 15th September, 1884.

From—A. P. MACDONNELL, Esq., C.S., Secretary to the Government of Bengal, Revenue Department,

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

*Introductory remarks.*—The Bengal Tenancy Bill, as revised by the Select Committee, was forwarded, under cover of your letter No. 784 of 4th May last, to the Bengal Government, for an expression of its own views on the subject, and of the views of those officers whom the Lieutenant-Governor might desire to consult. The revised Bill, with the Select Committee's Report and the minutes of the dissentient members, had been previously published in the *Gazette of India*; and, with the view to giving the Bill the utmost publicity, the Lieutenant-Governor, in anticipation of formal sanction, had the Bill republished in the *Calcutta* and *Vernacular Gazettes* on the dates stated in the margin, while translations were at the same time made freely available to the public at a nominal price.

*Calcutta Gazette*, 2nd, 9th, and 16th April, 1884.
*Bengali Gazette*, 29th April, 6th and 13th May, 1884
*Bihár Gazette*, 6th, 13th, and 20th May, 1884
*Urya Gazette*, 8th and 15th May, 1884.

2. On receipt of your letter under reply, no time was lost in communicating its contents to the Board of Revenue, to the Commissioners of Divisions, to District Officers, and to Judicial Officers of all grades, whose general experience or special acquaintance with rent litigation rendered their advice valuable. Copies of your letter were also sent to the various public Associations which have, from time to time, addressed the Government on the Rent Question.

This action was followed by the issue of a circular letter (a copy of which is herewith forwarded for the information of the Government of India) in which the Lieutenant-Governor sought to lighten the labour of all officers consulted by bringing to their notice the chief points for enquiry and report. Thus no effort has been spared by this Government to give the fullest publicity to the revised Bill, and to secure the fullest examination of its provisions.

3. *Method of enquiry.*—The discussion of the Bill by Executive officers was carried through by a system of divisional conferences. It seemed to the Lieutenant-Governor to be desirable that, at the stage the rent controversy had then reached, the enquiry should be limited as far as possible to practical considerations, to the exclusion of abstract or theoretic speculations. He therefore directed that district officers, having made necessary enquiries on obscure points, and having consulted all interested in the subject or willing to give advice, should meet their Commissioners and discuss with them the clauses of the Bill in the light of actual facts prevailing in each district. No doubt all officers the last year, when the Bill, as introduced into Council, was referred to them for opinion, expressed their views with reference to local facts; but on this occasion the Lieutenant-Governor believed that each officer's opinion, when exposed to the criticism of other officers cognizant of the facts or of similar facts, would assume due proportions, while many of the advantages of a Commission of Enquiry would be attained without the dangers which a Commission in the present state of agrarian feeling in these Provinces would unquestionably produce. The result has justified the Lieutenant-Governor's hopes, for some of the reports now submitted exhibit a knowledge of the country, a grasp of the many complications of this large measure, and an impartial sympathy with all classes, which challenge the highest praise. It is a pleasure to the Lieutenant-Governor to feel that there are but few points in these reports on which he finds himself not in accord with the views of the majority. Where he does differ, he has felt himself bound to justify his opinion in the fullest manner.

The duties of judicial officers did not permit of their attending the conferences. They accordingly have submitted separate reports, many of which are distinguished by ability and value. Some private gentlemen interested in land, and some Landholders' Associations, have also contributed criticisms which are worthy of consideration. The Bengal and Bihár Landholders' Association, though asked to advise, have not yet favoured the Government with their views, owing, the Lieutenant-Governor understands, to the interruption in the Association's arrangements consequent on the lamented death of their Secretary, the Hon'ble Rai Kristo Das Pal Bahadur. The Association promise, however, to forward an expression of their views at a later date.

4. Thus to the already imposing mass of evidence on this subject, a large addition has been made, which should, in the opinion of the Bengal Government, render the early decision of the question a matter of ease, as it is a matter of the utmost consequence to the peace and prosperity of these Provinces. The new evidence, however, possesses features of interest which are all its own. In the first place it is interesting as impartially reflecting every shade of opinion in the controversy. In the next place, it is remarkable for the proof it affords (if, indeed, any was wanting) of the necessity, not only for legislation on the Tenancy question, but for legislation in the general direction of this Bill. Even those officers who are in principle most opposed to the Bill admit, by their comments, the necessity for improvement in the existing law. On matters of detail, there is of course much difference of opinion, and on some points of principle further reflexion and enquiry have modified previous views. All this was what was expected: unanimity was neither possible nor indeed desirable. But through all these varieties of opinion, the Lieutenant-Governor on most points perceives a general undercurrent of agreement as to what ought to be done, though the way to do it is not always clear. It will be his endeavour in the following observations to indicate the direction in which agreement lies and the best way to give effect to it where desirable. The result will, the Lieutenant-Governor believes, prove that the main principles of this measure have passed successfully through a trying ordeal, while many modifications suggested thereby are in the direction of the results for which this Government has consistently contended.

5. *Applicability of the Bill to Government Estates.*—There is one other point on which the Lieutenant-Governor would touch in these preliminary remarks. It has been made a subject of reproach against the Bengal Government, both in the Press and on public platforms in this country and in England, that while forward to recognize tenant-right in settled estates, it was unwilling to recognize it in its own property, the khas mehals. This Government has accordingly been upbraided with inconsistency; and a settlement case which, though carried out seven years ago, has recently come on appeal before the High Court, has been used to charge it with disingenuousness. The reproach is as unmerited as the charge is baseless. The Bill lends no countenance to the reproach, and, by repealing the special procedure of Act VIII (B.C.) of 1879, plainly refutes it; while the liberal policy which this Government has inaugurated in all its dealings with raiyats, and in all questions connected with land—a policy which, in harmony with that recently enunciated by the Government of India in regard to Land Revenue Settlements, has to some extent, anticipated the Bill—should have saved it from the charge. If the cases to which reference is made teach any moral, it is this: that there is an urgent necessity for a revision of the Tenancy Law throughout these Provinces. For, if despite checks and counter-checks, large enhancements, promoted by men who had nothing to gain thereby, were decreed by the courts and upheld on appeal, what, it may be asked, is not possible where the stimulus of self-interest has full play, and where the adjudication of the courts is not awaited? There is no doubt—indeed the reports now submitted prove—that there are officers who take far more extreme views of the zamíndárí rights of Government than the Government itself does; still all that the present Government of Bengal

could, by executive action, do, has been done to soften the rigour of the present procedure in every portion of these Provinces where re-settlements are in progress. And nowhere has leniency been more conspicuously shown than in the Midnapore estates (which it is a mistake to think belong to Government), where for about forty years the raiyats had held their lands without any enhancement; and where, during the litigation with some 2,654 raiyats, collection of the enhanced rent from 88,538, who did not litigate, was postponed; where, after the Government had been successful in the litigation, remissions, amounting to over two-and-a-half lakhs of rupees, were allowed; where since the conclusion of the settlement, the number of holdings sold up for arrears of rent has averaged no more than ·03 per cent. per annum on the total number of holdings; and where special arrangements were made to receive and treat with leniency the representations of all who felt aggrieved. It is as reasonable to blame this Government for the evil results of the existing law as it would be to blame Wilberforce or Clarkson for the evils of slavery. The Government is doing its best to remedy the evils which it recognizes.

6. With these remarks I am now to discuss the Bill, chapter by chapter, postponing, as in my letter of 27th September 1883, minute points of detail and verbal criticisms for those communications which the Lieutenant-Governor trusts to make from time to time, as during last session, to the Select Committee. I am also to add here that such of the points raised in the second and fourth paragraphs of your letter under reply, as may not be noticed in their proper connection, will be discussed when the Lieutenant-Governor has concluded his comments upon the Bill.

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## CHAPTER I.

7. *Definition of "estate."*—Exception has been taken to the definition of "estate"* in section 3 as not including Government khas mehals. The objection is groundless, as already stated; but it may be desirable here, with the object of obviating further misapprehensions, to state precisely how the matter stands. Under the provisions of section 6, Act VII (B.C.) of 1876, the Collector of every district is bound to maintain registers of revenue-paying and revenue-free lands. One of those registers exhibits the "estates," borne on the revenue-roll of the district. Now the revenue-roll of every district consists of two departments—the fixed and the fluctuating. The fixed department deals with "estates" the revenue of which is settled permanently or for a term of years with proprietors or farmers; the fluctuating department treats of Government "estates" the rents of which are collected direct from the tenants. Thus every estate or khas mehal of which Government is the proprietor is borne on the revenue-roll of some district, and as a consequence is inscribed in the register to which section 3 (1) alludes. If Government be not the "proprietor" of the khas mehal; in other words, if the land be such a tenure as is referred to in the proviso to section 3 of the Bill, and held under some owner of an "estate," it will still be included in that "estate," and thus object to the provisions of the Bill. There can therefore be no doubt whatever that "estate," as therein defined, does include Government khas mehals, and that the substantive provisions of the Bill will be as largely enjoyed by the raiyats on Government estates as by those in ordinary zamíndáris. The statements to the contrary effect, which have from time to time been made by the opponents of the Bill, are entirely without foundation. If the Bill, as drafted, afforded any foundation for them, the Government of Bengal would be the first to demand that the Bill should be so modified as to include Government estates. The only advantage the Government retains over the ordinary zamíndár under the Bill is the certificate procedure. In paragraph 28 of my letter of 27th September 1883, the reasons are given which justify that advantage.

* "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained, under the law for the time being in force, by the Collector of a district.

8. *Definitions of "rent" and "holding."*—Rent is defined in the Bill to mean "whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of land held by the tenant." To that definition it has been objected that it may be held to include cesses (which are prohibited by section 85), if such cesses are willingly paid by the raiyat, as, to avoid an increase of the rental for land, they often are. But it seems to the Lieutenant-Governor that any payment which is prohibited by the Bill cannot be a legal payment; and as "rent" must be a legal payment, it necessarily excludes all cesses not recognized by law. It is a matter of drafting, and if the definition would be made clear, as by the insertion of the word "legally" before the word "payable," the Lieutenant-Governor would have no objection.

A point is raised by Mr. Dampier, late member of the Board of Revenue, in connection with the definition of "holding,"† which may here be made the subject of some explanation. A raiyat is let into possession of a plot of land in 1880, and afterwards in 1884 is let into possession of another plot on the same conditions. As both plots are held on the same conditions, do they, asks Mr. Dampier, form one holding? To Mr. Dampier's question the answer would seem to be that as the lands are not held on the *same*, but on *similar* conditions, they do not necessarily form part of an entire holding. Whether in point of fact the new and the old land should be regarded as amalgamated, depends on the arrangement made by the raiyat with his landlord. It is true that in common phraseology all the land a tenant holds is called his holding; but cases constantly occur in which the

† *Section 3* (7).—Holding means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions.

parcels of land making up the holding are held by distinct titles and on separate terms. The Lieutenant-Governor, then, thinks that ordinarily the question of one or two holdings should be a matter of contract between the landlord and tenant; but the raiyat should, apart from any contract on the point with the landlord, have the option of amalgamating the new land with the old, or holding it apart. The latter point is important in the deltaic districts, where settled raiyats may take fresh land by the year, relinquishing at the year's end if they find the cultivation unremunerative. If every new plot of land taken up in this way within the village or estate for temporary cultivation were regarded as an addition to the "holding," the settled raiyat of these deltaic districts might often suffer, while the landlord, too, might be put to trouble. Instead of a simplification and a benefit, the settled *status* might then prove a difficulty and a loss.

9. In concluding his remarks on this chapter, the Lieutenant-Governor would call attention to the words "held immediately from a proprietor," in section 194, as they seem to him to exclude *darpatnis* and similar under-tenures from the operation of Chapter XVI. In accordance with section 16, Regulation VIII, 1819, and Act VIII (B.C.) of 1865, tenures (other than *patnis*) transferable by the title-deeds or established usages of the country are saleable, after decree, in the same way as *patni* taluks. The object of the present Bill is not to alter the existing law in regard to such tenures; but the Lieutenant-Governor fears that the words quoted from section 194 may, if no further explanation be given, have the effect of neutralizing the definition in section 3 (16).*. The question is one of mere drafting, and needs only that attention should be called to it.

* *Section 3 (16).*—"Patni tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatni and other similar tenures referred to in that schedule.

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## CHAPTER II.

10. *Definition of "tenure-holder."*—The definition of "tenure-holder"† in the Bill has been objected to because of the too great prominence given to the conception that the tenure-holder is primarily a rent-collector. It has been urged by the Legal Remembrancer that the tenure-holder "has undoubtedly acquired a right to the land itself subject to the right of the cultivator," and accordingly Mr. Garrett, to give effect to that view, would define the tenure-holder as "a person who has acquired land by grant or purchase, primarily with the object of subletting it to others," &c., Mr. Garrett's way of looking at the matter is supported by the Burdwan Conference and by the general consideration that tenures, in districts with an abundance of waste land, were not created on the basis of an existing rent-roll. It is, however, probably true at the present day, that in most districts there is but little surplus land, and that where tenures are created at all they are tenures in regard to land under cultivation and not in regard to waste land. It would, in the Lieutenant-Governor's opinion, be less true to the fact to say that a tenure-holder in the present day acquires land to bring it under cultivation than that he acquires a right to collect rents from lands already under cultivation. While, therefore, the Lieutenant-Governor does not question Mr. Garrett's view that, subject to the cultivator's interest, the tenure-holder does acquire a right to the soil of his tenure, he must express his belief that the definition of the Bill is more in harmony with facts than the proposed emendation. It is, moreover, to be observed that settling raiyats is the ordinary method of reclaiming waste land, and from this point of view the Lieutenant-Governor has no objection to Mr. Wilson's proposed addition "or to bring land under cultivation by establishing tenants upon it."

† *Section 5 (1).*—"Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of person who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

11. *Definition of "raiyat." Objections.*—There is, however, one point on which the definition of tenure-holder is clearly defective. It does not provide for those tenure-holders who derive title from persons who are themselves neither tenure-holders nor proprietors, as defined in the Bill. On this point also the definition of "raiyat"‡ is by common consent defective. A "proprietor" is defined to be a person or a number of persons§ owning an "estate," while an "estate" means land covered by one entry in the register of revenue-paying or revenue-free lands. Thus a "proprietor" is a registered revenue-paying owner of land or a registered lákhirájdar. A tenure-holder, as defined in section 5 (1), on the other hand, derives his title either from a proprietor or another tenure-holder. But there are many owners of land in these Provinces who sub-let, yet are neither "proprietors" nor "tenure-holders" as defined in the Bill. There are, for instance, the dependent talukdars referred to in paragraph 99 (5) of the Select Committee's Report, not a numerous class, it is true, but still existing in some districts. There are petty lákhirájdars and the aymadars referred to by the Burdwan Conference—a far more numerous class—whose names appear at present in no registers of revenue-free property. Possibly there are the raiyats on churs, which have not come within the operations of the *dearah* survey, though the Lieutenant-Governor is not prepared to say that they are so clearly outside the definition as the others are. As the Bill stands, no tenure-holder and no cultivator holding land under these possesses the *status* which it is intended to confer. It would seem therefore that the definitions of both tenure-

‡ *Section 5 (2).*—"Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself or by members of his family, or by hired servants, or with the aid of partners

§ Having regard to section 2 (3) of the General Clauses Act (1 of 1868), the words "number of persons" might be omitted. If retained, they should also be inserted in the definition of "tenant."

holder and raiyat need correction with reference to the preceding considerations. The correction suggested by the Presidency Conference would meet the difficulty were those owners of lákhiráj holdings, to whom the proviso in section 3, Regulation II, 1819, refers, liable to be registered; but in the Lieutenant-Governor's opinion it is doubtful if such liability attaches to them. Possibly an adaptation of the suggestion of the Bhagulpore Conference might suit—"or under a holder of revenue-free lands not coming within the definition of estate; or under a holder of lands that are rent-free."

12. *Its applicability to the deltaic districts.*—There are two other points in connection with the definition of raiyat—one raised by the Presidency Conference, the other by the Commissioner of Chittagong—which deserve notice. The Presidency Conference, in order to bring private thatching-grass lands and the like within the definition, would insert the words "gathering the produce" after the words "cultivating it," and this notwithstanding the provisions of section 225 (Rights of Pasturage, &c.). It seems to the Lieutenant-Governor that the questions dealt with by section 225 would come more naturally under Chapter IX (miscellaneous provisions regarding rent). In connection with that chapter, he will propose that section 225 be inserted after section 83 (produce rents), and that some modifications be introduced into it which will meet the object which the Presidency Conference has in view. The point raised by the Commissioner of Chittagong needs more detailed notice. In the Chittagong Division there is still a good deal of waste land and much room for the expansion of cultivation. The supply of land is larger than the demand for it, and accordingly there are fluctuations in the area under tillage varying with the state of the rice market. The same description is applicable to other tracts of country in Bengal, as instanced by the report of Mr. H. Reily, the Manager of the Chanchal Wards' Estates in Maldah, in the Government estate of Jeypur in Bogra, and elsewhere. If in such localities there is a prospect of a dear market, more land is cultivated; if the market promises to be cheap, cultivation is contracted. But as in a favourable year a raiyat may thus sublet more than half his holding, the fear is that by the operation of section 37 ("the convertible tenure-holder") he would be converted into a tenure-holder. A tenure-holder might find himself deserted by his raiyats the following year of cheap prices, and he might have all the land on his hands again.

If, as seems probable, section 37 be not retained in the Bill—a point which will be discussed later on—the difficulty which Mr. Lowis foresees will of course disappear; the person on whom falls the risk of cultivation will remain the "raiyat," not the nomad who is here this year and away the next. But if it be resolved to maintain section 37, then, in the Lieutenant-Governor's opinion, the only way to provide for the peculiar circumstances of the Chittagong Division and other portions of the country to which the conception of the "convertible tenure-holder" may be deemed inapplicable, would be to invest the Local Government with the power of suspending the operation of the section in these localities. The necessity for such a suspensory power must of course tell against the retention of section 37; but it seems clear that the adoption of Mr. Lowis' proposal (*i.e.*, the addition of the words "or by means of inferior cultivators holding by the year or at fluctuation rates") would frustrate the object of the section all over Bengal.

13. Apart from the reference to section 37, which will be dealt with in its proper connection, the Lieutenant-Governor has no criticism to offer on clause 4 of the section.* He must, however, deprecate the suggestion of the Legal Remembrancer that sub-clause (*c*) should be placed before sub-clause (*a*), the object of the suggestion presumably being to direct the court's attention more to the origin of the tenancy than to existing custom. The Lieutenant-Governor is clearly of the opinion that, where a custom is well established, it should rule the character of the tenancy. Where a custom is not well established, there only should the courts have recourse to the always debateable ground of the origin and nature of the right.

* In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—
(*a*) local custom;
(*b*) the provisions of section 37 with respect to raiyats who sub-let more than half their holdings; and
(*c*) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

14. *Presumption of status of tenure-holder from area of holding.*—Coming now to clause (5) of the section,† it will be noticed that the proposal has called forth various expressions of opinion. The Commissioner of Chittagong thinks that 100 bighas (33 acres) is too high a limit, and would reduce it to 50. The Presidency Conference accept the clause as it stands; the Dacca Conference and Mr. Dampier, who even favour a reduction of the area, would change the presumption into an absolute rule, in which case Mr. Dutt, Collector of Backergunge, hereby meeting several objections, would allow a fee to be levied on the creation of the tenure. The Bhagulpore Conference would support the Bill if the greater part of the holding were sublet, while the Patna and Burdwan Conferences oppose the presumption, the former alleging it to be contrary to fact,‡ the latter because it deprives the zamíndár of the *bonus* said to be usually taken on creation of tenures. Judicial officers' opinions are less divergent, the majority agreeing in considering the presumption fair and in accordance with existing facts. This is the view which the Lieutenant-Governor himself entertains and supports, although no doubt some weight is lent to the more absolute proposal by the adhesion it has received not only in these reports, but also in the Rent Commission's Bill. In this connection the attention of the Government of India is requested to Mr. Dampier's remarks, and to the observations made on the subject at page 19 of the Report on Sir Ashley Eden's Bill.

† Where the area of a holding exceeds 100 standard bighás, and the whole or part of it is sublet, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

‡ On this point the Lieutenant-Governor, doubting the correctness of the Conference's view, has called for further information.

## CHAPTER III.

15. *Status, rights and liabilities of tenure-holders.*—This chapter has met with general approval, though some officers object on the point of the limitation on enhancements. This result must be pronounced very satisfactory having regard to the fact that in previous drafts on this part of the subject success was not thought to have been achieved. The officers most competent to advise on the subject of tenures are those acquainted with the deltaic districts of the Chittagong and Dacca Divisions, and it is from them that the chapter has received the greatest approval. The remarks of Mr. Lowis, Commissioner of Chittagong, and of Mr. Romesh Chunder Dutt, Officiating Collector of Backergunge, are especially valuable, and to them the Lieutenant-Governor would invite particular attention.

16. *Discussion of the 20 years' presumption in relation both to tenure-holders and to raiyats.*—The first noticeable point in connection with the chapter is the question of the 20 years' presumption afforded by the existing law, in the case of tenures as well as of occupancy holdings. As the arguments for and against the 20 years' presumption are practically the same, whether applied to tenures or to occupancy rights, it may be convenient to discuss the point once for all, and, as a whole, in this connection.

In the first place, then, the Lieutenant-Governor calls special attention to the enormous preponderance of evidence in favour of retaining the presumption as it now exists. The Patna, Burdwan, Presidency, Dacca and Orissa Conferences are unanimously against any change. The Bhagulpore Conference (by a majority) and Mr. Lowis would allow a sufficient time for registration, and then annul the presumption. The Rajshahye Conference alone would give the raiyat two years in which to *sue* for the establishment of the presumption or forfeit his privilege—a proposition which the Lieutenant-Governor would absolutely reject as affecting a right which the raiyats have enjoyed under the present law since 1859, and as tending to extreme litigation. Of the judicial officers, a very few would annul the presumption altogether, a larger proportion would modify it, while a still greater number would retain it unchanged. Thus the Lieutenant-Governor feels himself fully justified in saying that the weight of authority is against any alteration. Those who would abolish the presumption proceed altogether upon speculative reasons; those who would modify it say nothing to discredit the opinion of the Subordinate Judge of Burdwan (himself for modification) that it "has worked remarkably well without placing the zamíndárs under any serious disadvantage." Those, lastly, who would make no change can point to many benefits conferred on the country by this presumption, and to the frustration by means of it of many attempts to fraudulently destroy old established rights.

On the merits of the question, I am to say that the only arguments urged against the presumption which do not elude one's grasp are that it is an infringement of the Permanent Settlement, and that it does injury to auction-purchasers. Apart altogether from the debateable ground of raiyats' rights under that Settlement, the argument in fact involves the absurdity that no rules of procedure are to be laid down with a view to shorten litigation in disputes between landlord and tenant. No regard is to be had by the courts to the proverbial carelessness of most raiyats in preserving receipts* or to the ease with which zamíndárs can refute the presumption if falsely raised! The argument based on injury to auction-purchasers is hardly more substantial. Throughout these discussions the Lieutenant-Governor has sought in vain for any authenticated instances of such injury. Vague theoretic denunciations take the place of fact, and even these papers furnish instances on this point of many who come to curse remaining to bless. The same result emerges from an examination of the statistical information available on the point. The published reports of the Board of Revenue show that (taking an average over five years) out of 147,942 estates in these Provinces, paying a revenue of over three-and-three-quarter crores of rupees, only 647 estates, chargeable with a revenue of little more than a lakh-and-a-quarter of rupees, have been sold yearly for arrears. It is impossible to maintain that when sales are few—the estates sold being at the same time so small—that this 20 years' presumption does, in point of fact, work any practical hardship.

* On this point see the report (paragraph 46) of Mr. Reily, Manager of the Chanchal Ward's Estates.

On the evidence before him, therefore, Mr. Rivers Thompson feels that he might, with the weight of authority, argument and fact in his favour, ask for the retention of the presumption contained in the existing law as regards occupancy-rights as well as tenures. But on a full review of the Bill as a whole, he abstains from taking up that position. Recognising the sincerity of the zamíndárs' objections to the presumption, and the insistance with which they have urged their views, he is willing to make a concession to their wishes, provided that the interests of the raiyats shall not, in the long run, suffer from the change in what is to them a most valuable provision. Considering that the proposals he will, in the sequel, make in connection with occupancy-rights and fair rents, will secure the interests of the raiyats, the Lieutenant-Governor is willing to modify the 20 years' presumption and make it run, in all future cases, from 20 years before the passing of the Bill.

17. *Limitations on enhancement of tenure-holders' rents. Risks of collection.*—The next question for discussion is the limitations on enhancements of rent of tenures, the main points being whether in enhancement suits any allowance should be made to the tenure-holder for the *risks* of collection; whether the limits of double the former rent in section 8† and of immunity from enhancement

† Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable.

* When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the ten years next following the date on which it has been so enhanced.

in section 10* are fair; and whether a *bonus*, if paid on the creation of the tenure, should be taken into consideration in a suit to enhance the tenure's rent. To the first point objection was taken in the dissent of the late Raí Kristodás Pál, on the ground that it was objectionable in itself, and an unnecessary innovation on the existing law. The hon'ble gentleman's objection has not been supported by those officers who have noticed the point; but Mr. Rivers Thompson must say that he admits its force. Where facts do not show existing law to be defective and unsuited to the circumstances of the time, the Lieutenant-Governor holds by existing law. In the provisions of section 8, Regulation V of 1812, on which this portion of the Bill seems founded, the *risks* of collection are not taken into account. It is not shown that any difficulties have resulted from this particular omission in that law. Risks of collection would in any case be very difficult to estimate as apart from costs, and it may be doubted whether it is wise, without clear necessity, to launch the courts on a sea of speculation with no certain course to steer by. The Lieutenant-Governor would therefore support the proposal to eliminate the *risk* of collection as a distinct factor in the question to be considered under section 7, clause 3 (*c*).

"*Bonus*" *paid on creation of tenure to be a factor in enhancement suits.*—Next, as to the third point—taken by Mr. Dampier and the Subordinate Judge of Tipperah—that in enhancement-suits the *bonus* paid on creation of the tenure shall also be taken into account. The point is a legitimate one, and the Lieutenant-Governor would accept the suggestion to add the words "or any *bonus* paid by tenure-holders on creation of tenures" at the end of clause 3 (*a*), section 7.

*Necessity for same period of immunity from enhancement of rent in case of tenures as of occupancy holdings.*—Coming now to the question of the limitations in sections 8 and 10, the Lieutenant-Governor agrees with those who think that there should not be one rule for occupancy-raiyats and another for tenure-holders. *First*, as regards section 10, the main point to look to is the tenure-holder's capacity to pay, and his right, if he increased his burden, to pass on a reasonable portion of it to his raiyat. But if the tenure-holder's rent is enhanceable three times in 30 years, while the raiyat's rent is enhanceable only twice in the same period, there would be ground for the complaint either that an injustice have been done to the tenure-holder, or that he had some reason for treating the raiyat unjustly. Therefore the Lieutenant-Governor is of the opinion that, whatever period of immunity from enhancement you allow the raiyat (and he has no doubt that the raiyat should have at least 15 years), that same period should the tenure-holder also enjoy. If rents are to be increased, there is an advantage in general contemporaneous adjustments.

*Limitation of enhancement to double the former rent: Exceptions.*—Then, as regards section 8, the Lieutenant-Governor, agreeing with the Presidency Conference and the Collector of Backergunge, is of the opinion that some amendment must be introduced. In cases of recent reclamation, where land is let at an initial peppercorn rent, the limit of double rent would be unjust to the landlord; in other cases it would tend to injustice to the tenant. The Lieutenant-Governor is aware that section 212 saves contracts for the reclamation of waste lands; but he is not quite satisfied with the wisdom of such a provision which, in point of fact, excludes all such contracts from the provisions of this Bill. Agreeing with those who hold that the substantive law should meet all cases, where this can be done, the Lieutenant-Governor would cut out section 212, and provide for such cases in this place and also under Chapter V, by substituting for section 8 the section in the margin, which he has adapted from the excellent report of Mr. Dutt, Officiating Collector of Backergunge. It will be seen from the observations I am to make under section 45, withdrawing the limitations on the enhancements by suit of raiyat's rent, that a tenure-holder will always be able to raise his raiyats' rents in due proportion to the increase which he himself may have to pay.

"Where the rent of a tenure-holder is liable to enhancement, the enhanced rent, fixed under the last foregoing section, shall not be more than double the rent previously payable.

"Provided that when waste land has been let at a low rent for the purpose of reclamation, the limit of enhancement fixed by this section shall not apply, and the court may order such enhancement as it may think proper, after taking into consideration the cost of reclamation, the profits on that outlay, and all other facts connected with the case."

18. *Simplified procedure for registration of transfers.*—The only other point on the subject of tenures which the Lieutenant-Governor desires to notice is registration, and in regard to it he invites the attention of the Government of India to the following remarks made by the Collector of Backergunge:—

"The provisions made in sections 16 and 17 for the registration of transfers by sale in execution of decrees are simple and workable; but the provisions made in sections 15, 18, 19, 21, and 22, for the registration of voluntary sales, are exceedingly complex and impracticable. * * * When it is remembered that the landlord in this district means very often an illiterate *hoaladar* or *miras karshodar*, or is represented by a gomasta on ₹ 3 a month, that forgery is one of the commonest crimes in the district—the utter impracticability of the complex provisions stated above will be abundantly manifest.

"I had this matter thoroughly discussed in the meeting† which was convened in Burrisal for considering the Bill. The meeting agreed with me in thinking that a simpler and more practicable procedure should be laid down for the registration of private sales of tenures. The simplest possible procedure is this: Parties transferring tenures generally register the deeds-of-sale, and this may now be made compulsory under the provisions of this Bill. Registrars will in such cases take an additional fee of two per cent. on the annual rent of the land, and also the sum of one rupee for service of notice on the landlord. These sums he will remit to the Collector, with an intimation of the contents of the document. The Collector will transmit the fee to the landlord, and also serve notice on him to show cause within a month why the sale should not be declared valid. In case there is no objection raised, the sale will be declared valid (after the expiry of the month). In case objection is raised by the landlord, the Collector will refer the matter to the Civil Court, which will then proceed under section 19 of the Bill. This procedure

† Of zamindars, tenure-holders, &c.

will require only an additional register being opened in the Collector's office, and will avoid much litigation, fraud, and forgery. The opening of registers by *hvaladars* and *kaem karshadars* will not be required, nor will they be fined for not doing what it is impossible for them to do."

This procedure is accepted by the Lieutenant-Governor as at once simple and effective as far as transfers by sale are concerned, while, as far as transfers by succession are concerned, the point will be met by the plan to be described in the next succeeding paragraph. Mr. Rivers Thompson therefore commends the procedure to the favourable consideration of the Government of India. He will also recommend a similar procedure in connection with the pre-emption clauses of Chapter V.

19. *Registration of tenures for rent-suit purposes.*—I am here to take the opportunity of making some observations on the general subject of the registration of tenures raised in paragraph 14 of my letter of 27th September, 1883. It will be remembered that one of the proposals made by the Lieutenant-Governor for facilitating the recovery of arrears of rent was the extension to tenures of the law for the sale of *patní taluqs*, or of a modification of that law. Before any such extension could take place, it was, however, deemed essential that the tenures to be brought under the operation of summary procedure should be registered. Accordingly the attention of executive officers was called to the point in paragraph 28 of my circular letter of the 24th of May last to Commissioners. The call has not elicited as full an expression of opinion as the Lieutenant-Governor had expected, many officers who have noticed the point, dwelling more on the difficulties in the way of such registration than on the means of surmounting them or on the advantages of such a record. The question has again received the Lieutenant-Governor's careful attention, and he is satisfied, not only in the interests of the landlords, but of the general administration, that an effort should be made to register tenures. One of the most persistently-urged claims of the zamíndárs is that they should be given a summary means of recovering arrears of rent. There are, as the Government of India know, insuperable objections in the way of recognizing that claim in respect to occupancy-holdings; but in respect to tenures the case is quite different. The number of tenures in Bengal is estimated to be very considerably in excess of one million. From this it will be apparent that if by any administrative arrangements these tenures could be made amenable to a summary procedure for arrears of rent, a most valuable boon would be at once conferred on zamíndárs.

That boon can only be conferred if these tenures are registered. The Government could not possibly agree to bring any holding under a summary sale procedure unless its character was first determined by registration. But it is said you can never hope to register such a vast number of titles; you have no means of making your will effective. The Lieutenant-Governor admits that at present this is true, though if it be to the superior landlord's interest to have tenures registered, as it undoubtedly would be under the right of summary sale for the recovery of rent, the objection loses force. But at present no doubt in the case of proprietary interests, not to speak of the subordinate interests of tenure-holders, the means for maintaining a correct registry are defective, although the initial registration of estates has been on the whole successfully effected. There is one, and only one, effective means of compelling registration, and that is refusing to any proprietor (or tenure-holder) the right to sue for rent unless his name be registered under the law provided for the purpose. That means is simple, and it would be effective.

In regard to the registration of proprietary titles under Bengal Act VII, 1876, the Lieutenant-Governor has now under consideration the amendment of the Act in the direction indicated. By enacting that law we have proclaimed the necessity for maintaining a proper and correct register of titles to land, and it would be inconsistent to stop short of giving effect to our declaration. The Lieutenant-Governor would make registration as cheap and convenient as possible; but he would insist upon it. He sees no more hardship in refusing an unregistered proprietor liberty to sue for rent than refusing him liberty to sue on unstamped paper. If this principle is affirmed, the registration of all tenures becomes a matter of easy accomplishment. Moreover, if, as will be proposed later on, the landlord's power of bringing tenures after registration to summary sale be recognized, his self-interest will furnish a most efficient means of procuring such registration. Further, the registration of tenures may become a method of enforcing the maintenance of a correct and full registry of proprietary rights. A tenure-holder would be (in the Lieutenant-Governor's plan) prohibited from suing for arrears of rent, unless his superior landlord's name, as well as his own, were registered. The tenure-holder would thus have the most powerful motive for informing the Collector of any default on the superior landlord's part. The Collector would then enforce registration as under the provisions of the existing law which is now inoperative, because there is no one to move the Collector to put it in force. As a reward to the informing tenure-holder, permission to him to go on with his suit might be endorsed by the Collector on his plaint. Thus, the ends of the Registration Law would be secured, and no obstruction offered to the assertion of private rights by those who were not themselves to blame.

In course of time this system would become a self-acting harmonious one. No tenures would be created unless by registered proprietors, and it would probably be a stipulation in the deed that the registration shall be maintained. At all events, if it be not adopted, or if some system of the sort be not adopted, it will not be possible to afford to zamíndárs in regard to tenures that summary procedure which, under proper precautions, this Government is willing to grant. I am to revert to the subject in connection with Chapter XIV of the Bill.

## CHAPTER IV.

20. *Status of raiyats holding at fixed rates.*—This chapter, apart from the question of the 20 years' presumption already dealt with, has elicited but few comments. A minority of the Burdwan Conference, a majority of the Patna Conference, and Mr. Dampier see no reason for distinguishing old-established raiyats with fixed rates from occupancy-raiyats at variable rates. The reasons given, however, are inconclusive. The silence of the great majority must be taken for approval, and the Lieutenant-Governor himself does not think that any alteration in the chapter is necessary or desirable. He therefore approves of it as it stands.

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## CHAPTER V.

21. This chapter has been most thoroughly discussed, and it has received the earnest consideration of the Lieutenant-Governor in all its details and bearings. I am now to state the final conclusion to which Mr. Rivers Thompson has come on a review of the entire evidence on the subject of the settled raiyats, his *status*, rights, and liabilities.

22. *Definition of the settled raiyat.*—The Lieutenant-Governor at the outset fully admits that the majority of the officers consulted disapprove of the definition of the settled raiyat as given in the Bill.* A very small and uninfluential minority are in favour of adhering to the declaration based on Act X of 1859; but it is generally perceived that this would be an improper limitation, and the proposal which finds favour is the elimination of the word "estate" from the definition. This proposal is, in point of fact, a reversion to the definition in section 19 of Sir Ashley Eden's Bill, *minus* the very noteworthy explanation to that section, by which a raiyat became "settled" after three years' residence, and *minus* the alternative two-mile radius limit.

*1. Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

2. If, in any proceeding under this Act, it is proved or admitted that a person holds land as raiyat, it shall as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a raiyat.

3. A person shall be deemed for the purposes of this section to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

4. A person shall be deemed, for the purposes of this section, to have held as a raiyat any land as a raiyat by a person whose heir he is.

5. Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

6 A person shall continue to a settled raiyat of a village or estate as long as he holds any land as a raiyat in that village or estate, and for one year thereafter.

7. If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

In regard to the definition of the settled raiyat, the Lieutenant-Governor regrets to find himself at variance with the majority of his officers. This is the only point in connection with this Bill on which the difference between them is irreconcileable, and therefore Mr. Rivers Thompson deems it the more necessary to set forth plainly the grounds of difference, and the reasons why he adheres to the definition in the Bill. It might, indeed, be possible to avoid a conflict of opinion by an appeal to authority. Her Majesty's Secretary of State in the 11th paragraph of his despatch† of the 17th August 1882 has already suggested, as a proper definition of the resident raiyat, that he "shall be one who, or whose ancestor, has occupied any land in the village *or estate* for 12 years." That is substantially the definition of the Bill, and an appeal to this authority, if pressed, should go far to decide the question. Mr. Rivers Thompson, however, does not desire that the question should be disposed of otherwise than on a full consideration of its merits.

† Correspondence between Government of India and Secretary of State, p. 55.

Discussing the question on its merits, then, the Lieutenant-Governor presumes that no one will question the position that at the time of the Permanent Settlement resident raiyats, if given new lands in their village held them subject to the pergunnah rate, and on the same certain tenure as the old. This right of fixity of tenure at fair rates became obscured between 1793 and 1859, owing to causes which, during this controversy, have been too often discussed to need relation here. The right, however, lived as well in popular tradition as in the conscience of the Government, and at last an effort was made in 1859 to give it vitality and effect. The intention of the Legislature‡ then was that a resident raiyat, to establish rights of occupancy in any land in the village, should merely have to prove the occupation of *some* such land for 12 years. It is well known, however, that judicial interpretation thwarted that intention, the proof of *status* being thereby made difficult where it should have been made easy. This error has had injurious results not only in these Provinces but elsewhere, and it is now generally agreed that it should be corrected. The only difference between the Lieutenant-Governor and his officers is the extent to which the correction should go. The majority of officers think it only necessary to place the raiyat in the position in which the Act of 1859 had intended to place him. The Lieutenant-Governor having over his officers in this matter the advantage of a wider sweep of view, thinks that we cannot ignore the progress of events during the last 25 years. He does not agree in thinking that you can put back the hand on the dial.

‡ *See* despatch from Secretary of state, dated 17th August, 1882, paragraph 10.

All—a very few dissentients excepted—agree in accepting the mouzah or village as an integral portion of the definition of the settled raiyat. The majority of officers consulted would accept it as the envelope of his rights, giving those rights free scope within it, but not letting them go beyond it. The Lieutenant-Governor, on the other hand, would, if the "estate" were larger than the village, give the settled raiyats' rights the same scope within the "estate" that his opponents would within the village. In other words while the majority of officers would allow the settled raiyat to hold *ab initio* on an occupancy title any land of which he gets possession in the village in which he lives, the Lieutenant-Governor would, in addition, give him the same right in the "estate" if the "estate" be larger than the village. Thus, the difference between the Lieutenant-Governor and his officers is one of degree, and not one of essence.

The objections raised to the wider definition which the Secretary of State has suggested, and to which the Lieutenant-Governor holds, may be summed up in the statement that it is unfair to give a man occupancy rights in one village of an estate because he happens to be settled raiyat of another. Because a man is a settled raiyat in village A of an estate, why, asks a Collector of pronounced views, should he "taint," by the occupancy right, land in village B of the same estate?

To this question an answer has already been given in my letter of 27th September, 1883. I am now to answer it again; but before doing so I would point to a grave inconsistency in the position of those who would eliminate the "estate" from the definition. The sole ground of their opposition is the alleged injustice which would be done to the landlord. It would, they admit, be injustice to the raiyat not to give him the privilege of fixity of tenure in his native village, but to extend it further would be, they say, unjust to the zamíndár. But it is notorious that the village may, and often does, comprise portions of more than one "estate." In Bihár, where an assured tenure is even more needed by the raiyat than in Bengal, this state of things is very common. The question then occurs—with what consistency can a privilege be refused to a raiyat in the "estate" on which he lives, and under a landlord to whom he owes fealty, yet be granted to him in an "estate" in which he does not live, and under a landlord to whom he is a stranger? Is not this swallowing the camel and straining at the gnat?

But the question is not to be decided by a detection of inconsistency in the views of men who are not usually inconsistent. When a body of men, whose judgment ordinarily there is good reason to trust, are found to be supporting an apparently illogical position, it is necessary to examine well the foundations of a contrary belief that there should be no betrayal into hasty judgment by any argumentative victory. This is the spirit which animates the Lieutenant-Governor in opposing the views of the majority of his officers. He does not oppose them hastily, or in any depreciatory spirit; he opposes them on the higher ground which, as head of the administration, it is his province to take.

The Lieutenant-Governor's substantial reasons for adhering to the Bill as it stands are first, that under the circumstances of the time as large a basis as is consistent with the rights of the landlords should be given to the occupancy right; second, that the injury to landlord's rights from the proposed definition is mostly imaginary. In my letter of the 27th September, 1883, the first point was dwelt upon at length, and with the object of recalling the argument on which he would lay stress the Lieutenant-Governor would request a reference to the 11th paragraph of that letter. Here, however, allusion may be made to the statistics therein cited from the Report of the Famine Commission to prove that over nine-tenths of the peasantry of Bengal were so poor that in their case any abuse of this privilege was not a practical question. These figures borrow singular corroboration from some of the reports now submitted. Attention is specially invited to the reports of Mr. Reily, Manager of the Chanchal Ward's Estates, and of Mr. Hennessey, a zamíndár of the Bhagálpore district. Mr. Reily states that out of 29,335 raiyats in the Chanchal Estate, 17,023 hold less than 5 bíghás, and 10,603 less than 20 bighas* of land each. It seems obvious that the definition could not work any harm in Chanchal; for a man with even a six-acre holding is not likely to be the sort of "land-grabber" whom zamíndárs have any reason to fear. A similar conclusion is enforced by Mr. Hennessey's figures, which show that out of 9,885 raiyats, 8,369 pay a yearly rent of Rs. 10 and less, while 1,020 pay no higher rent than Rs. 20. In other words, while 95 per cent. of his raiyats can barely keep body and soul together, Mr. Hennessey fears from them encroachments on his proprietary rights, and claims that the law shall discourage their endeavours to raise themselves from the miserable serfdom of being tenants-at-will!

* The bíghá here is about one-third of an acre.

The fact is that the zamíndárs on this, as on several other portions of the Bill, are fighting a shadow. As the Lieutenant-Governor has already stated, the settled raiyat of a village usually holds no more than a few acres of land. He is far too poor to maintain two homesteads. He can never cultivate far from his home. The village in Bengal, owing to various disintegrating influences, is far smaller now than it was a century ago. Then, a large margin of uncleared waste afforded ample scope for enterprising raiyats. Now, the settled raiyat finds in his village small scope for enlarging his holding or improving his condition. He does not often find it in adjacent villages either; but should he come to terms with his landlord for vacant land in a neighbouring village (and it is only with the knowledge and consent of the landlord that the raiyat could acquire a new holding), it is is surely a monstrous proposition to maintain that there should be no stability in the contract. The Lieutenant-Governor asserts that it is essential to the public interest that there should be stability in the contract. Stability of that sort is no larger development of the old customary law of the country than the

circumstances of the times require. As the Famine Commission say:* "It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security." To these principles Sir Ashley Eden sought to give effect by creating a settled *status* after three years' residence. Mr. Rivers Thompson, anxious to break with the past as little as possible, prefers to allow the landlord four times that period within which to know his tenant. The landlord surely ought to know his raiyat well in twelve years. When he knows him, when once the accrual of the settled *status* has put the seal of the landlord's approval upon the connection, from thenceforward the Lieutenant-Governor would not allow the raiyat to be treated as a nomad in any portion of the landlord's estate. From the standpoint of public policy, as well as of consistent legislation, this is essential.

* Report, Part II, Chapter iii, paragraph 25.

*Should the "estate" be limited as to extent, or period of creation?*—The Government of India, in paragraph 8 of your letter under reply, ask whether, with reference to unusually large estates, any exception might be made to the general rule the Lieutenant-Governor has now approved of, and whether any modification is desirable in section 27(*b*). On the first point I am to say that the Lieutenant-Governor, having regard to the condition of the raiyat and the perfect freedom of the landlord to give or withhold the land, is satisfied that abuse of the rule is not a practical danger to fear. He therefore would admit of no exception to its simplicity; but to save disputes, he is willing that the limits of the "estate" should be taken as at the time of the introduction of the Bill into the Legislative Council.

In conclusion, the Lieutenant-Governor desires me to say, with reference to the presumption raised in the 2nd clause of section 26, that, as it is no more than a recognition of facts which generally prevail, it receives his cordial support. The suggestion that has been made in places, that a three or six years' occupancy should be proved before the presumption is recognized, would only introduce complications and litigation.

23. *Acquisition of occupancy-right by landlord.*—Passing on now to sections 28,† and 29,‡ a minute, though not unimportant, criticism on the former is that it should be made to cover a purchase by a co-sharer as well as by a 16-anna landlord. It might probably be so held by the courts, but, as the doubt has been started, it is well to remove it. As the Lieutenant-Governor understands the section, it means that if a landlord buys or otherwise comes into possession of an occupancy-right, the right shall be *de facto* extinguished. The land, however, continues portion of the *raiyatí* stock of the country, and the under-raiyats, if any, in it become elevated to the non-occupancy *status*. If this view of the section be correct, the Lieutenant-Governor approves of it. He is opposed to the opinion of those who would allow the purchasing landlord the discretion of keeping the occupancy-right alive, for that would be tantamount to the extension of subletting in a very objectionable form.

† "If the landlord of a raiyat having a right-of-occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist; but nothing in this section shall prejudicially affect the rights of any third person."

‡ "Any person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder."

*Acquisition of occupancy-right by joint-proprietor or farmer.*—The provisions of section 29 are not so clear; and, though supported by some officers as in accordance with actual facts, are opposed by others as an injurious innovation. If the provision of section 29 (1) were restricted to proprietors, and not extended also to tenure holders, the Lieutenant-Governor would see but little to object to. If each of several proprietors, by mutual consent, cultivates specific land in a joint estate, it would be a hardship in case of a partition that such land held for years, and possibly improved by one co-sharer, should lapse from his possession on a division of the estate, or on sale. Where, however, a person is let by the proprietor into possession of land under certain specific conditions, non-performance of which will void the contract, it seems to the Lieutenant-Governor objectionable to provide that, during the continuance of the contract, the lessee may fortify himself against the lessor by acquiring rights which ought not to be separate from the larger title conferred by contract upon him. It is to the public interest that the privileges conferred by section 29 be restricted as much as possible, for it obviously opens a door to the extension of the objectionable *khurfa* system. The Lieutenant-Governor would therefore strike out "or tenure" holder at the end of section 29 (1).

Mr. Rivers Thompson agrees with the Patna Conference in the desirability of making it perfectly clear that a temporary landlord shall not be permitted, by any species of occupation during the currency of his lease, to acquire occupancy-rights; and he also thinks it necessary to provide that, if an occupancy-raiyat buys a share in an estate, he shall not lose his occupancy-right in the land, unless, on a partition of the estate, that land fall to his share. In this case the Lieutenant-Governor would not have the anomaly of an independent proprietor holding an occupancy-right as against himself. He would then have the occupancy-right extinguished, and the land converted into *khámár*, in which occupancy-rights may grow if not barred by the landlord. If, in a partition, the land do not fall to the raiyat's share, he should, as in the last preceding paragraph, retain his occupancy-right in it as against his co-proprietors.

24. *Incidents of the occupancy-right.*—I am now to discuss the important questions connected with the incidents of the occupancy-right.* The first incident specified in clause (*a*) of section 31 may be passed over briefly, the only noteworthy criticism passed on it being

* *Section 31.*—"Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

"(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy, but shall not be entitled to cut down trees in contravention of any local custom.

"(*b*) He may make improvements on the land as by this Act provided.

"(*c*) He shall pay rent at fair and equitable rates.

"(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

"(*i*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

"(*ii*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

"(*e*.) He may surrender his holding in accordance with this Act.

"(*f*.) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

"(*g*.) He may, subject to the provisions of this Act, sublet his land or any part thereof.

"(*h*.) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property; provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished."

† *See* on this point the protest recorded by the Patna Conference against the statement made in the late Raí Kristodás Pál's dissent that it is the landlord who improves. See also the similar remarks of the Collector of Backergunge.

that in portions of the country occupancy-raiyats have already the right to fell timber. If a local custom to that effect be well established, that custom will, the Lieutenant-Governor presumes, continue to rule the question. If there be no well established custom, the clause seems to be in accordance with the general interests of the country. The Lieutenant-Governor will also make no lengthened comments on incident (*b*). The reports strengthen his previous conviction† that, as a general rule, it is the raiyat, not the landlord, who improves. When the landlord does improve, either directly or through the Government, under the Drainage Acts the raiyat bears the costs, and is often afterwards saddled with an increase of rent. The Lieutenant-Governor must therefore support clause (*b*) of the section.

To clauses (*c*) and (*e*) no objection has been taken by any one, and in themselves they are unobjectionable; but in regard to clause (*d*) a very important proposal is made by the Patna Conference, which the Lieutenant-Governor is willing to accept. Where an occupancy-raiyat uses his land improperly, or breaks a condition of his lease consistent with this Act, he is liable to eviction as the Bill now stands. But the rigour of section 31 on this point is softened by the provisions of section 170, which grant the raiyat a relief against forfeiture on payment of damages. It may, however, happen that the raiyat may not be able to pay damages, and the question thus raised is—shall he be evicted or shall his interest be sold, and the damages made good to the landlord from the sale proceeds, the balance, if any, going to the raiyat? In the opinion of the Patna Conference the latter course should be adopted, and they accordingly suggest that, for the words "except in execution of a decree for ejectment passed," be substituted the words "but his interest in the holding may be sold." This modification of the section seems to the Lieutenant-Governor pefectly just and reasonable, contributing to the advantage of both landlord and raiyat alike, while conferring the additional public benefit of keeping alive the occupancy-right. He therefore desires to give the proposal his entire support.

25. *Transferability of occupancy-rights. Unobjectionable in execution of decree for arrears of rent.*—The great question of the free transferability of occupancy-rights has attracted the widest public attention; and in approaching the consideration of it here, the Lieutenant-Governor proposes to discuss with it the question of pre-emption. Both questions are intimately connected, and it will be convenient to deal with them together. It is also to be understood that the following remarks apply only to transfers by private sale or for debt. The Lieutenant-Governor, and nearly all his officers, accept the decision that occupancy rights throughout these Provinces shall be saleable for their own arrears of rent, the occupancy-raiyat being no longer liable to ejectment for such arrears.

*History of the proposal to make occupancy-rights transferable.*—It will be in the remembrance of the Government of India that, in my letter of 27th September, 1883, Mr. Rivers Thompson, on a review of the evidence then available, pronounced in favour of a general recognition of the right to transfer, subject to the landlord's privilege of pre-emption. Since then a large mass of statistics, to which I am presently to refer, has been collected from all the civil courts and registration offices throughout the Province; while important contributions to our information on the subject have been made by judicial and executive officers of every grade in the service, as well as by private gentlemen interested in land. On the value of this mass of evidence the Government of India will form their own estimate, but I am to say that, in the opinion of the Lieutenant-Governor, this evidence, while indicating the necessity for caution in dealing with the Province of Bihár, vindicates in all other respects the general correctness of the view which he has already expressed upon this subject. This view is that if by any limitation or legal provision the limitation of the occupancy-right to actual cultivators could be secured, most, if not all, of the objections to free transfers would be removed.

It is within the knowledge of the Government of India that in an early stage of the discussion on the amendment of the Bengal Tenancy Law, the proposal to make occupancy-rights freely transferable was considered by the Bihár Rent Committee and negatived. The opinion of the majority of that Committee, however, was that if occupancy-right could not be safely rendered transferable by sale or purchase, occupancy-raiyats should, at all events, have the power of subletting their holdings. The necessity under the circumstances of the time of conferring on the raiyat some legal power of turning his interest in his holding to more use than is safe under the existing law was recognized, and the method of subletting seems to the Committee least likely to result in injury to the raiyat through his improvidence.

That, however, was not the view which commended itself to the Rent Commission, who, on this point, adopted the arguments urged by Mr. Justice Field in the appendix to his Digest. Subletting, in the Commission's opinion, was as far as the expropriation of the owner went, an

effective substitute for sale, while by depressing the industry of the actual cultivator of the soil and by depriving him of all motive for thrift, it produced grave evils from which free sale was held to be free. The Commission accordingly in section 20 of their Draft Bill recognized sale by private contract and in execution of a decree for arrear of rent, while by prohibiting mortgages and consequently sales in execution of decrees for debt, they aimed a blow at the money-lender and at the system of subletting—a system which the Bihár Committee would have recognized.

The Commission's proposals were not accepted in their entirety by Sir Ashley Eden, who held (reasonably as Mr. River Thompson thinks) that mortgages were often better for the raiyat than sale, and who thought that, in view of the provisions of section 19, clause (3) of his Bill which gave the landlord a veto on the sale if the purchaser were not resident in the vendor's village, the fullest freedom of transfer might be allowed. Sir Ashley Eden's views, as embodied in sections 19-21 of his Bill, were not adopted by the Government of India without change; the change being in one way opposed to, and in another way in favour of, the raiyats' interests. The change was opposed to the raiyats' interests, inasmuch as under Sir Ashley Eden's Bill transferability among the resident-raiyats of a "village" was altogether free. It was subject to no veto, and to no right of pre-emption on the landlord's part. On the other hand, the change was in favour of the raiyats' interests, in so far as by removing the restrictions of place and class of purchasers, it opened a wider market for the sale of the occupancy-right. It must be added, however, that, in the opinion of many competent judges, the benefits of the wider market were neutralized by the very complex pre-emption provisions of the Bill, as introduced in March, 1883.

Such was the state of this question when Mr. Rivers Thompson was called on to deal with it last year. He approved of the recognition of free sale in Bengal, and he also accepted the principle as regards Bihár, though not so unreservedly. He admitted that that the intrusion of the money-lender was undesirable; but he believed that such intrusion was not always a practical danger, as the British Indian Association itself had admitted, while it might, when dangerous, be guarded against, or its effects minimized. Granting this to be possible, the Lieutenant-Governor was satisfied that the recognition of the right of transfer would create a direct interest in the improvement of soil, would stimulate cultivation, would tend to establish a substantial peasant proprietary, would give a valid security for the realization of the landlord's rent, and, by increasing the marketable value of the land, would lower the rate of interest when the raiyat had to borrow.

*Objection to the provisions of the Bill on the subject of transferability of occupancy-rights.*—But, as I have stated, this adhesion on the Lieutenant-Governor's part to the principle of free sale was not an unqualified adhesion. It was conditional on the acceptance of certain safeguards. Admitting as a theoretical proposition that the free right of transfer was desirable, Mr. Rivers Thompson was careful to make such recommendations as on the evidence then before him seemed necessary to safeguard the gift from proving a fatal one to the raiyat or a hurtful one to the zamíndár. The chief, if indeed not the only, evil to be feared from the unrestricted right of transfer was the expropriation of the raiyat by the money-lender. As remedies, the "convertible tenure-holder" (section 37 of the Bill) was created, and the pre-emption sections (32-36) were reproduced in, it was thought, a simpler and more workable form. These supposed safeguards have now been subjected to searching criticisms, which the Lieutenant-Governor must admit they have not satisfactorily withstood.

26. During the last few months, various representations deserving of all respect have reached the Lieutenant-Governor as to the danger of recognizing in the Bill the free sale of occupancy-rights. Far better, it was said, not to interfere in a matter where mistaken interference might produce disastrous consequences of great magnitude. Better, it was said, to allow things to take their course, and permit custom to mature and crystallize. Certain inconveniences might possibly be felt from the uncertainty as to title, but in time these would wear off, and perhaps facilitate legislation; meanwhile it was better to bear those ills we have than to incur the risks of greater evil.

On the other hand, very weighty arguments were pressed to the opposite effect. It was urged that the free sale of occupancy-rights was an established and growing fact all over Bengal; that while it had nowhere produced any evil consequence (the case of the Sonthal Parganas cited on the other side not having been yet admitted to be a case in point by this Government), agricultural prosperity had invariably attended its establishment, and lagged behind where it was still unacknowledged. Finally it was urged that things had now reached that pass that action was necessary in order to quiet titles and give formal sanction to a custom which had done nothing but good throughout the more advanced districts of Bengal Proper.

*General character of local opinions on the subject of transferability of occupancy-rights.*—In the papers now submitted to the Government of India, the same conflict of argument and feeling is apparent. There is the absence of objection to complete freedom of transfer on the part of officers in the advanced metropolitan and in the Eastern deltaic divisions. There is hesitancy in Northern Bengal, where, however, the prevalence of the custom of unrestricted sale is admitted, but doubts are entertained as to the effect of its formal recognition by the law. Lastly, there is open hostility to the proposal on the part of Bihár executive officers. They fear that the provisions of the Bill may deprive raiyats of their land; in fact may bring about in the Patna Division all the evils which the Bombay survey and settlement system is popularly, even if ignorantly, credited with having caused in the Dekkhan. On the other hand, the judicial officers in the Patna Division are disposed to recognize transferability if it could

be restricted to actual cultivators of the soil—a result towards which no practical solution has hitherto been suggested.

27. The Lieutenant-Governor need hardly say that he has weighed these conflicting views with all the care and attention which the gravity of the case demands. He has sought, not unsuccessfully, for evidence on every point of importance; and he has been ready to consider all proposals which, by way of reasonable adjustment, seemed calculated to preserve to each party their substantial rights while admitting of mutual concession. It will be in the recollection of the Government of India that in the earlier stages of these discussions the landlords denied that free sale did exist in any portion of these Provinces. The correctness of that assertion was challenged in my letter of the 27th September last, and statistics adduced from the records of the Civil Courts and the registration offices to establish that, as a matter of fact, occupancy-rights were sold more or less freely in every district in Bengal. Those statistics exposed the fallacy of the objections that had been raised regarding the existence and prevalence of the custom of free sale; but their significance was questioned by the landlords on one material point. It was said that the sales exhibited in them were dependent on the landlord's consent. This was a new contention, and, if it were true, then obviously free sale was not prevalent in Bengal in the sense this Government had assumed. Further enquiries were therefore necessary. These enquiries have now been made, and, as the Government of India will perceive from the papers submitted, they have resulted in establishing, beyond further dispute, the position for which the Lieutenant-Governor has contended. It can no longer be doubted that wherever throughout these Provinces the custom of free sale is well established, there occupancy-rights are bought and sold without interference on the part of the zamíndár. The utmost extent to which interference proceeds is the levy of a fee when the purchaser's name is registered (which it often is not) in the landlord's *sherista*.

But in addition to solving the doubts which had been raised on this point of the landlord's consent to transfers—a point which had an essential bearing on the subject of pre-emption—the Lieutenant-Governor also thought it right to obtain, for the information of the Government of India and the public, as full and precise information as the purpose required, of the extent and progress in recent years of transfers of *raiyati* holdings, whether by private sale or in execution of decrees throughout these Provinces. The statistics thus collected will be found as appendices to this letter. They furnish all the information on the subject that it is within the reach of this Government to procure.

*Statistical evidence as to prevalence of transferability of occupancy-rights.*—With Appendices I and III—transfers of holdings at fixed rates—the Lieutenant-Governor is not on this occasion concerned. No doubt as to the transferability of such holdings has, as far as he knows, been seriously suggested, and therefore the question does not come within the immediate scope of this discussion. It is with Appendices II and IV that we are chiefly concerned, and the latter of these statements is thus far significant that, while it shows a progressive increase in the number of transfers,* the price per holding is very low. At private sales, on the other hand, the price fetched is high as evidenced by Appendix II. No doubt one has to pay more for a clear title than for a doubtful one; but still it would seem that, as Mr. Reily, Manager of the Chanchal Ward's Estate, thinks, sales of occupancy-rights anywhere except in the immediate neighbourhood of the holding itself, usually bring less than the market price. This fact may be turned to account with reference to Chapter XV of the Bill.

* This increase will be more marked if regard be had to the sale statistics published at page 373, Volume II of the Rent Commission's Report. These statistics show that in 1878-79 only 7,764 occupancy-holdings were sold in court, while the number has now risen to 11,992.

Turning now to Appendix II, I am in the first place to call attention to the progressive and considerable increase in the number of transactions in every division in Bengal, to the considerable aggregate area annually transferred, to the high multiple of the annual rent for which the holding usually sells, and to the small number of purchasers recorded as money-lenders compared with the number recorded as raiyats. In regard to the last point, it has been argued that no conclusion can be drawn regarding the profession of the purchasers, many mahájans being raiyats, while most well-to-do raiyats lend money. There is no doubt truth in this; the accuracy of the return is probably vitiated by cross-divisions of the sort. Still the main fact appears that transfers of occupancy-holdings are chiefly made to cultivating raiyats. And as far as Bengal Proper is concerned, the great weight of evidence in the papers now submitted to the Government of India is to the same effect, that hitherto the operation of free sale has not been to throw into the hands of money-lenders, unconnected with cultivation, any disproportionate share of *raiyati* land.

28. *Lieutenant-Governor's conclusion to recognise transferability of occupancy-rights in Bengal Proper.*—But although this has been the general and satisfactory effect of the operation of customary transfers, that effect is less marked in some divisions than in others. It is most marked in the Presidency, Rajshahye, Dacca, and Chittagong Divisions, where undoubtedly the position of a raiyat is better than elsewhere. In these Divisions the Lieutenant-Governor has no hesitation in saying that recognition of the free right of transfer, even if unaccompanied by restrictions, would be productive of good. He does not lose sight of the fact that officers connected with the Rajshahye Division think otherwise, and regard the recognition of free sale as likely to throw occupancy-holdings into the money-lenders' hands. In those very localities, however, free sale is already established, and if the raiyats are so indebted that they are now the money-lender's slaves in all but the name, the Lieutenant-Governor hardly thinks that the name will be changed by the operation of this Bill. In the sequel the Lieutenant-

Governor will make certain proposals which will place in the landlord's own hands the power of preventing the money-lenders' intrusion.

In the Burdwan Division the statistics seem to indicate encroachments on the side of the mahájun; but the Lieutenant-Governor is willing to accept the assurance of the Burdwan Conference, and of all the judicial officers of that Division who were consulted, that no real danger to the raiyats is to be apprehended by the recognition of that which is, in point of fact, the established custom. The high value of the occupancy-right and the general condition of the people support this view, which accordingly Mr. Rivers Thompson accepts, subject to limitations to be stated in the sequel.

29. *Condition of transferability of occupancy-rights in Bihár.*—Coming now to Bihár (which term includes the Patna Division and the districts of Bhagálpur and Monghyr of the Bhagálpur Division), I am at once to say that the Lieutenant-Governor finds himself in the presence of a very different state of things from that prevailing in Bengal Proper. Whether the standard be the number of transactions effected or the area of land transferred, it must be confessed that free sale of occupancy-rights has as yet not taken in Bihár the root that it has taken in Bengal Proper. That free sale does exist in, and for many years has to some extent existed in, the Bihár districts is true; and that the custom is increasing is undisputable. But it must not be overlooked that the number of transactions, which even now is small for such a population, has only risen to anything like an important figure within the last two years, when these Rent Bill discussions may conceivably have influenced the movement; while the total area of land transferred by private sale last year (17,255 standard bíghás, or 5,752 acres, out of a cultivated area estimated at 13½ millions of acres) is so small as to afford significant proof that, having regard to the views expressed by the Famine Commission as quoted in the margin, free transfers have not become customary throughout the Province of Bihár to such an extent as to justify recognition in the Bill. The preceding considerations as to the narrowness of any general custom of free sale in Bihár seem also to gain additional support if we have regard to the average area of the holdings transferred. This is a point on which the statistics presented in paragraph 14 of my letter of 27th September last were unavoidably deficient, and on which the Lieutenant-Governor, at the instance of the Select Committee, has now had careful enquiries made. It will be observed that in 1882 the average area of the holding was small in every district except Sháhábád (where *guzastas* and occupancy-rights are often confounded), and that in 1883 the average continues very low in the North Ganges districts. This fact suggests a doubt whether in the majority of cases the free sale now existing in Bihár is transfers of entire holdings or only of parts of holdings. Possibly many of those transfers may not be transfers of entire holdings which the law proposes to recognize, but transfers of portions of holdings which, by section 97, the Bill prohibits. This doubt borrows confirmation from the Report of the Patna Conference (paragraph 15), which is decidedly opposed to the formal recognition by the law of the right of free transfer in that Division.

"Though, on the whole, we regard the general concession of the power of sale of these rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must, no doubt, be, to a great extent, governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." (Part II, page 120.)

30. *Lieutenant-Governor's conclusion to leave transferability of occupancy-rights in Bihár to custom.*—In the face of these facts, and of this expression of local opinion, and having regard to the views expressed by the Famine Commission as quoted above, the Lieutenant-Governor no longer recommends the recognition in the Bill of the right of free transfer of occupancy-rights in Bihár. When recommending the recognition of free transfer in Bihár last year, the Lieutenant-Governor, in order to check possible evil effects, proposed to make the operation of the provision "the subject of watchful supervision." A more full and thorough examination of the question has now satisfied Bihár officers (whose opinions on most other essential portions of this Bill enquiry and examination have only tended to strengthen and confirm) that the recognition of the right of free transfer would be at best a measure of uncertain tendency, and, therefore, under the circumstances, not a wise measure to adopt. On the other hand, further enquiry has elicited the fact that the registration statistics, instead of being significant of a quickly extending custom as was thought last year, indicate that, although the custom obtains to a limited extent, it can by no means be said to affect largely the agrarian economy of the Province. This being so, the Lieutenant-Governor recommends that free transfers by private sale in Bihár should not be recognized; but that the circumstances of that Province be, for the present, provided for by adding to section 217 a second illustration of the nature noted in the margin, and by excluding Bihár from the operation of section 31 (*f*).

"The custom that occupancy-rights are transferable by sale or bequest is not inconsistent with, and is not expressly, or by necessary implication, abolished by, this Act. That custom, therefore, wherever it exists, will not be affected by this Act."

31. *Reservation of Power to extend transferability.*—This Bill is not intended to apply *suo vigore* to Orissa or Chutiá Nagpur, or the scheduled districts (a fact which has been kept out of sight in the efforts made to excite the tea interests against it); but if the time comes for extending its provisions, or any portion of them, to those localities, and it be then found that the custom of free sale has not made more progress there than now appears to be the case, those regions may be appropriately treated, as, in the Lieutenant-Governor's opinion, Bihár should be treated now. It is also a question whether power should be reserved for the Local Government to extend the provisions for free transfer to Bihár, when the custom in that Province shall have further grown, or whether that power should be reserved to the Legislature.

The latter course would save the Local Government from the pressure which might be brought to bear on it to recognize free sale. The point, however, is one on which the Lieutenant-Governor does not propose, in the present communication, to offer a decided opinion.

32. *Limitation on transfers of occupancy-rights in Bengal Proper. Substitute for pre-emption clauses of the Bill.*—In now submitting to the Government of India the proposal as to the limitation which may be imposed on the free transfers of occupancy-rights in Bengal Proper, I am to premise that on the evidence this limitation is in the nature of a concession to the zamíndárs, which they do not enjoy at present, and which is *pro tanto* calculated to diminish the value of existing occupancy-rights. When, therefore, in the course of this letter, proposals are made to safeguard raiyats' interests where they are now insufficiently protected, the concessions made to the zamíndárs in the highly important matter of transferability, as well as in the no less important matter of the 20 years' presumption, should not be lost sight of.

Mr. Rivers Thompson starts from the principle that if by any definition or legal provision the limitation of the occupancy-right to the actual cultivators could be secured, the free right of transfer would by common consent be unobjectionable. This was the principle to which Sir Ashley Eden sought to give effect in section 21 of his Bill. Holding that no one ought to have a more lively interest in the raiyats' welfare than their landlord, and that none could have more local knowledge, Sir Ashley Eden proposed, as has been already stated, to utilize that interest and experience by giving the landlord a veto on sales to other than resident raiyats of the vendor's village. To that proposal there are two objections—one from each side. The objection from the landlord's point of view is that the right of veto does not enable him, if he so wishes, to exclude the *mahájun* resident in the vendor's village, while from the raiyat's point of view the fault is that the proposal narrows the market and consequently depreciates the price. It would seem, however, that both objections disappear if the raiyat's right to sell to any one be recognized subject to a veto on the landlord's part if the sale be made to a person who does not depend on agriculture as a raiyat for his chief means of subsistence and income. The wishes of the landlords in excluding money-lenders will thus be met, a larger market will be secured to the raiyat, and the pre-emption provisions of the Bill, to whom most officers object, will be got rid of.

33. *Objections to pre-emption clauses of the Bill.*—The pre-emption clauses of the Bill meet, as the Government of India will observe, with no approval, and it is in the Lieutenant-Governor's opinion essential that they should be abandoned. The evidence submitted is conclusive on the point that as a general rule occupancy-rights are now freely saleable in Bengal without any interference on the zamíndár's part. To introduce the novel light of pre-emption therefore would very seriously depreciate the value of well-established occupancy interests. This seems to Mr. Rivers Thompson to be on the papers indisputable; while, even if that objection could be overcome, there is a consensus of opinion that the difficulties in working the precedure of the Bill as regards the pre-emption clauses are almost insuperable. As the Collector of Backergunj says, "a raiyat seldom sells his land except under sudden and pressing necessity. To give the landlord the right of pre-emption under such circumstances, and to compel the vendor to comply with the dilatory procedure laid down in section 32, would be virtually to stop the sale when the necessity is pressing."

*Abandonment of pre-emption clauses of Bill recommended in cases of private transfers and gifts. Modification of the clauses in case of execution-sales.*—The Lieutenant-Governor, accepting these views, recommends the abandonment of the pre-emption clauses of the Bill. He does this all the more willingly that he has no doubt the proposals, which he will now proceed to develop further, will give to the raiyat as large a market as seems necessary, will render needless the novel right of pre-emption in private transfers which the Mahárájá of Darbhangá has declared to be a "phantom right," and Raí Kristodás Pál to be "shadowy," which does not now exist, and which, if introduced, would be cumbrous, if not unworkable. In place of such provisions, which all unite in condemning, the Lieutenant-Governor would substitute the simple provision, referred to in the preceding paragraph, which will effectively secure the position and prestige of the landlord, and make him, should he wish to exercise his power, the guardian of his raiyats' interests. In regard to sales in execution of decree, the landlord's right of pre-emption at the highest bid offered seems unobjectionable; an opportunity might be given him to exercise it by providing for the timely service of notice on him of the day fixed for the sale. In regard to gifts, the Lieutenant-Governor would remove the necessity for pre-emption by limiting gifts to the donor's family, and then giving no right of pre-emption at all.

*Modus operandi of substitute for pre-emption clauses of the Bill.*—The details of this plan the Lieutenant-Governor would work out in the same way as in the case of transfers of tenures. There need be no notice to the landlord of intention to sell, and consequently none of that initial delay which would in many cases frustrate the object of free transfer altogether. On registration of the deed-of-sale (to be made in all cases compulsory) the registering officer will recover a fee for service of notice of the sale on the landlord. The Lieutenant-Governor also would not object to the levy of a registration fee payable to the landlord. To the landlord would be given (say) a month to question the sale before the District Registrar or Collector (as execution of deeds is now challenged) on the ground that the transfer is of the kind prohibited by the Act. Should the landlord's objections seem valid to the Registrar, he will refer the parties to the Civil Court having jurisdiction, whose order may well be rendered final as the matter for decision is either a simple matter of fact, or of such inference as Civil Courts are already in the constant habit of dealing with. Should the objections seem to the Registrar untenable, he will overrule them, leaving the landlord, if he pleases, to his civil remedy as in the previous case. Such a plan as this seems to the Lieutenant-Governor calculated to secure

most of the advantages of free sale with the minimum of risk. Parties will soon come to understand such a simple law, and if it be proposed to sell to a non-agriculturist, the landlord's previous consent will in all likelihood be applied for to avoid subsequent difficulty. At all events the plan departs no further from existing custom than the circumstances seem to require; it does away with the pre-emption sections, which by common consent are unworkable; and, under it, it will be the landlord's own fault if transfers are not restricted to the agricultural population, to which they are not unwilling to concede the right.

Such, then, is the scheme in regard to transferability which the Lieutenant-Governor commends to the consideration of the Governor General in Council. Broadly speaking, the scheme consists of the recognition of transferability in Bengal Proper (but not in Bíhár) subject to the landlord's veto if the purchaser be of the objectionable class of money-lenders whom landlords desire to exclude from possessing land. To enable the landlord to exercise his veto, notice of the sale must be given him, and he may then, within a reasonable period, object to it on the ground of the purchaser being a person not relying on agriculture for his chief subsistence and income. If the objection seem to the Registrar untenable, the sale will be confirmed. If the objection be established, the sale will not be registered; but in this, as in the preceding case, the parties will be left to their civil remedy.

The scheme thus briefly summarized comes before the Government of India supported by the weight of evidence which accompanies these papers. It meets the noteworthy objections of the zamíndárs, and it enables us to dispense with those pre-emption clauses of the Bill which were not only cumbrous but novel, and calculated to depreciate the value of existing rights. It might be urged by those who advocate free sale in Bihár that, as the plan now stated affords to the zamíndárs an effective means of preventing the intrusion of money-lenders, it might with safety be applied to that Province also. The idea is specious; but having regard to the fact that the sub-division of property in Bihár has gone to very great lengths; thatthe; process is still in active operation; that all landlords in Bihár except the largest, are needy that mahájuns have money to lend; that the practice of private transfers, though existing for a long time, is still limited in character and extent; and, lastly, that, on full deliberation, local opinion is against the recognition of free transfer at present, Mr. Rivers Thompson finally adheres to the opinion already expressed on this point.

34. *Subletting. The convertible Tenure-holder.*—Restrictions on subletting next demand attention, and in this connection the Lieutenant-Governor thinks it convenient to discuss also the question of the under under-raiyat (Chapter VII). Both provisions of the Bill, which are, after all, only phases of a single question, have engaged the Lieutenant-Governor's serious attention, and he finds, with regret, that the method suggested by him for dealing with them has not been received with favour. There is a general agreement among the officers who have been consulted that section 37* is unworkable.

* If the portion of his holding sublet by an occupancy-raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of any tenure-holder, be deemed to have become a tenure-holder within the meaning of this Act.

The conception of the "convertible tenure-holder" is not indeed open to many of the strictures passed upon it, and it will be observed that the Commissioner of Chittagong finds it not inappropriate to the circumstance of his Division. Still it must be admitted that as the Bill is drafted its efficacy entirely depended on registration. The Lieutenant-Governor quite accepted the necessity of not subjecting any tenure to the summary sale procedure unless previously registered. But he thought it possible that in each case the judicial proceedings might determine the character of the holding, and that, if it proved to be a tenure, it might then be registered and afterwards sold in execution of the decree. Conversion by registration and by decree of court as cases came up might, in his opinion, have proceeded simultaneously, pending that fuller knowledge of agricultural facts, and that more perfect basis for the operation of the section, which, in Bihár at all events, the survey will secure. And if in districts where no survey is to be made immediately, co-operation of landlords and under-raiyats against the subletting occupancy-raiyat did not in a self-acting way emerge from the Bill as it stands, it would probably have been secured by allowing the landlord to levy a fee on the conversion. The interest of the landlord in the success of the scheme would thus have been attained, while the under-raiyat would have gained, if not an occupancy right, at all events the non-occupancy *status*, possibly at a beneficial rent. Such considerations as these, coupled with the belief that if there be no such provision as section 37 in the Bill but little practical good can be obtained for the under-raiyat, predisposed the Lieutenant-Governor personally in favour of the provision. Besides the question in its relation to subletting has not been as fully considered as the Lieutenant-Governor had expected. As however, there is an agreement among the officers consulted against the retention of the section, and as the point is not of the first importance, the Lieutenant-Governor agrees to the omission of the section from the Bill. The presumption in section 3 (5) already dealt with may, perhaps, tend to the same end as section 37.

35. *Checks on subletting. The under-raiyat.*—If, then, section 37 goes out of the Bill, it seems to the Lieutenant-Governor that there is really nothing for it but to let the under-raiyat unprotected make the best fight he can, or to restore in his case the gross produce limit of section 119 of the original Bill. He believes that something should be done for the under-raiyat, and therefore he recommends the omission of section 62 (limiting the rent of the under-raiyat to 50 per cent. increase on the head rent if he hold under registered lease, and to 25 per cent. otherwise). The good that provision could do is very slight, for it can be easily evaded. There are large classes of the occupancy-raiyats, such as the *guzastadars* of Shahábád

holding at low fixed rates, who habitually sublet portions of their holdings at rents which are often double or treble the rents which they themselves pay. It profits the under-raiyat to cultivate even at such high rents; and any law which would run counter to an arrangement mutually beneficial to the lessor and lessee would be either evaded or would work injuriously to the interests of the community. This objection does not hold against the gross produce limitation, for it is wide enough to allow free play to the interests of all parties.

There is, then, no resource left but to let the under-raiyat alone, or to restore section 119 of the original Bill, limiting the rent to the value of five-sixteenths of the gross produce. Mr. Rivers Thompson does not abandon the hope that the gross produce limits on rents may be restored to this Bill. The circumstances under which he acquiesced in their removal will have changed, if the Lieutenant-Governor's new proposal is accepted to abandon the limitations which the Bill imposed on enhancements of rent owing to a rise in prices. Under that scheme gross produce limits need run no risk of being worked up to in the case of occupancy rents, and made the measure of rent in practice. These are points which I am to discuss with fullness later on. Here I am very earnestly to press on the Government of India the revival of the gross produce limit of section 119 of the original Bill in case of the under-raiyat in substitution for section 62. Such a limit on *khurfa* rents would probably work itself in course of time into the mutual relations of the people. It is in accordance with their traditions. There will then be some resource left the under-raiyat; some practical standard to which he could appeal, and which the village punchayet's authority and sense of justice might in time enforce. At present there is practically none.

36. *Enhancement by suit of the rents of occupancy-raiyats.*—Passing on now to enhancement of occupancy-raiyats' rents, the Lieutenant-Governor thinks it convenient to deal with enhancement by suit (sections 44-50) before considering the question of enhancement by private agreement (section 41).

The law for the enhancement of occupancy rents by suit, now in force in these Provinces, is contained in section 18, Act VIII (B.C.) of 1869. Briefly stated the grounds of enhancement are (*a*) the prevailing rate; (*b*) a rise in prices; (*c*) increased productiveness of the soil not at the raiyat's expense; and (*d*) excess area. In these grounds of enhancement the Bill makes one (chiefly) formal and one substantial change.* The formal change is the transfer from the enhancement sections to a different connection (Chapter VIII, general provisions as to rent) of the last ground (*d*); and the substantial change is the limitation of the third ground (*c*) of enhancement to increased productiveness brought about by the landlord or by fluvial action. The Bill, indeed, greatly facilitates the operation of the third, and in a still more marked degree of the second, ground of enhancement; but in those grounds of enhancement themselves no further change has been made.

* *Section* 43 (*a*)—That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*)—That there has been a rise in the average prices of staple food-crops in the locality or at the usual markets.

(*c*)—That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*)—That the productive powers of the land held by the raiyat have been increased by fluvial action.

37. *On the ground of excess area.*—To the formal change—the transfer of point (*d*) above to a new connection—the Lieutenant-Governor makes no objection. He thinks, indeed, that it may serve to obviate some doubt and misapprehension as to the justice of assessing excess area. Mr. Rivers Thompson also takes no exception to the new garb which the provision assumes in section 66 of the Bill, although he notes that the Legal Remembrancer to this Government prefers the present hard-and-fast rule as calculated to prevent litigation. Only on one point would the Lieutenant-Governor wish for any change, namely, the clearer recognition of the tenant's reciprocal right to a reduction when the measurement shows him to be holding less land than the stated area of his holding.

38. *On the ground of increased productiveness.*—The Lieutenant-Governor also agrees in the more substantial change introduced into the third ground so far as it goes. The difficulty of proving an increase in the productiveness of the soil due to natural agency is admitted on all hands to have been insuperable, and this ground of enhancement has only been fruitful in disputes between landlord and tenant without benefit to the landlord. The evidence in favour of the change in the law which the Bill proposes is thus conclusive. As the Eastern Bengal Landholders' Association say in their notes on the Bill, "enhancement on the ground of the increase of the productive powers of the land has always been found under the old and existing law to be the most unworkable of the provisions relating to enhancement."

39. *On the ground of fluvial action. Objections.*—But while the Lieutenant-Governor thus approves of the principle of exclusion adopted in the Bill, he fears that it will *pro tanto* be neutralized or vitiated by the recognition of enhancement on account of fluvial action. As far as Mr. Rivers Thompson understands, this exception was made to provide for enhancement of rents in alluvial tracts which are fertilized by periodic deposits of silt brought down by the great rivers which water Bengal. It has, however, been pointed out that, as the clause stands, it would justify claims for enhancement over those vast areas which are not riparian or alluvial, but still are inundated in years of heavy rainfall, when rivers overflow their channels or burst through their embankments. In the Lieutenant-Governor's belief this was not the intention of the Select Committee in framing the clause; yet, as the provision stands, such inundations as those referred to, which only fertilize the land for one harvest at the expense of another, may be made the ground for claims to enhanced rent. In the Lieutenant-Governor's opinion such claims should certainly be inadmissible; and this consideration at once raises the question whether in point of fact, it is either practicable or desirable that fluvial action should be retained at all as a ground of enhancement by suit in the Bill.

In his opinion, enhancement on the ground of fluvial action is not only impracticable, but also unnecessary. The land exposed to river action of the kind contemplated by the section must be either land which, though fully formed, is not above flood-level, or land in process of formation. If the latter, the idea embodied in section 213 (on which, however, the Lieutenant-Governor will afterwards have a few words to say) applies, and no suit for enhancement under this chapter would lie. The question would be one for private contract between landlord and tenant. If the lands be fully formed, though not above flood-level, their greater or less productiveness depends wholly on the character of the monsoon. If there be a good monsoon, there will be a good inundation, and a fertilizing deposit of silt. If the monsoon be bad, inundations are low; and the productiveness of these lands suffers. But it is obvious that no principle of permanent increase of rent can be fairly based on the continuance of good monsoons. Moreover, it is notorious that the increase of rents in chur or dearah lands keeps pace with their increased productiveness, and this practice will continue under section 213 of the Bill, or whatever similar provision may be retained in the Bill. When fully formed such lands pay adequate rents, while their productiveness becomes stationary. As far as rent-paying capacity goes, chur or dearah land thus becomes assimilated to the older formations, and if fluvial action be an inadmissible ground of enhancement in the one case, so should it be in the other. Fluvial action, while it remains a true and reasonable ground for increasing rent, is very fully recognized as such in section 213 of this Bill. Once the land is declared by the Collector to have ceased to be chur or dearah land, it will practically have ceased to derive from inundations increasing productiveness, or a greater capacity to pay rent. It should thenceforward be subjected to no other grounds of enhancement than apply to ordinary uplands. For these reasons I am to recommend that clause (*d*), section 43* and section 47† be omitted from the Bill. The Government of India will observe that the Commissioner of Chittagong and the Orissa Conference, who seem to have paid special attention to the point, agree with the Lieutenant-Governor, while the Patna Conference would greatly modify section 47.

* (*d*)—That the productive powers of the land held by the raiyat have been increased by fluvial action.

† Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*)—The Courts shall not take into account any increase which is merely temporary or casual.

(*b*)—The enhanced rent shall not exceed the previous rent by more than four annas on the rupee.

(*c*)—The Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

40. *On the ground of "prevailing rate," Objections.*—I now come to the subject of enhancement on the ground of the prevailing rate—in the Lieutenant-Governor's opinion the most objectionable provision of the Bill. In dealing in the sequel with the subject of the non-occupancy-raiyat, I am to express Mr. Rivers Thompson's belief that, subject only to the gross-produce limit on rents, if that be re-introduced into the Bill, as he trusts it may be, and subject to the stipulations to be made in connection with the settlement and tables-of-rates' Chapters, it is impracticable to save the *initial* rents of non-occupancy-raiyats from the effects of free competition, except by provisions of such delicate mechanism as to invite failure in practice. The Lieutenant-Governor, has, therefore, on a very careful review of this part of the Bill, and the discussions which have passed on it, resolved to withdraw from the position he has hitherto maintained in regard to the *initial* rents of non-occupancy-raiyats, and to look to other means for securing that equality of occupancy and non-occupancy rates which is such a necessary safeguard to agricultural prosperity in Bengal. As an inevitable consequence of this decision, and subject to the gross produce limit noticed above, the check (section 42), if check it can be called, on the *initial* rate at which even the occupancy or settled raiyat is let into possession of fresh land must also be withdrawn. With non-occupancy-raiyats (or for the matter of that, with occupancy-raiyats) in the market, it would be clearly useless to provide that the settled raiyat "shall not be bound to pay for land any higher rent than that which was paid for it by the previous tenant." Apart from the possibility that a previous tenant may have been paying a rack-rent, to make such a provision as that effective, the non-occupancy-raiyat must be prevented from bidding above the prescribed rate, and the landlord must be compelled to let the land at that rate to a settled raiyat, possibly chosen out of several competitors. Both propositions are utterly impracticable.

*Necessity for protecting occupancy rates.*—Appreciating, as the Government of India no doubt will do, the reluctance with which the Lieutenant-Governor has thus resolved to trust to indirect means for the important result of securing that equality of rates which he had desired to secure by direct means, they will the more clearly understand how vitally important is the principle that competition should not, by any provision of this Bill, be brought to bear on established occupancy rents. But competition will practically be brought to bear on occupancy rents by freeing the initial rent of fresh land from control, while the "prevailing rate" is retained as a ground of enhancement. If fixity of tenure be a necessity of agricultural progress, fair rents are no less so. But fixity of tenure is a conception incompatible with competition leading to rack-rent. If, therefore, the initial non-occupancy rent, and if occupancy rents for fresh lands, are to be competitive, as the Lieutenant-Governor, with the reservation mentioned, agrees to their being—if landlords are to have that power which in the Report of the Patna Conference (page 38) some of them declare they will exercise, of asking from the non-occupancy-raiyat any rent they please,—it becomes absolutely essential that occupancy rents should be protected; otherwise this Bill will become an irresistible means for rack-renting—a contingency which, in those portions of the Province where rents are already too high, especially in Bihár, cannot be regarded without apprehension. The "prevailing rate" deprives the occupancy-raiyat of protection, and for this reason the Lieutenant-Governor—

herein supported by a great weight of authority, judicial and executive—must respectfully press for the withdrawal of this ground of enhancement in the Bill.

In the early stages of this discussion, it was undoubtedly the fact that the question of "fair rents" did not attract as much attention as questions of fixity of tenure and methods of recovering rents. In truth it may be said that the interference of Government in the measure was accentuated by the tendency of the zamíndár to destroy occupancy-rights by "shifting" processes. When the question of fixity of tenure, as represented by the consolidation and extension of the occupancy-right, had somewhat passed out of the dominion of the discussion into that of accepted necessity, it was recognized that fixity of tenure without fair rents would be valueless. Therefore the question of fair rents became at once prominent. When it was afterwards ascertained that tables-of-rates were not very practicable, and that the Select Committee, while rejecting the gross produce limit on rents, had also practically left non-occupancy rents to competition, the enormous importance of the "prevailing rate" ground of enhancement became at once apparent. It had, indeed, been previously known that, owing to the impracticability of enhancement on the rule of proportion, landlords were largely having recourse to the "prevailing rate." It was also known that this ground of enhancement was being abused. The "prevailing rate," however, was stated to have antiquity in its favour, though those conversant with its origin as a spurious substitute for the "pargana rate" in Regulation V, 1812, knew that to be an error. They knew, too, that the substitute had operated in exactly the contrary direction to that intended by its framer, Mr. Colebrooke. All this caused greater attention to be paid to this ground of enhancement, with the result that this Government on mature deliberation resolved to oppose its retention in this Bill. Further consideration of the question has only served to strengthen that resolve. There can, the Lieutenant-Governor believes, be no longer any doubt that the retention of the prevailing rate as a ground of enhancement is unjust and fraught with the utmost danger to occupancy raiyats, who form the vast mass of the peasantry in Bengal.

*Weight of local opinion against "prevailing rate."*—In paragraph 9 of my circular letter No. 3T—R of the 24th of May, the attention of officers, executive and judicial, and of public associations, was called to the question of the "prevailing rate." This invitation has elicited a weighty expression of well-informed opinion, judicial as well as executive, against the retention of this ground of enhancement in the Bill. The Conferences which support the retention of the rule are Burdwan, Rajshahye, Bhagálpur and the Presidency. With reference to the first, it will be remarked from their 39th paragraph that they admit the non-existence of a "prevailing rate," but express belief that it would not be difficult to "ascertain a fair and generally existing *average* of rents of various classes of soil." On the other hand, in their 96th paragraph, they declare that it "would be impracticable to form tables-of-rates which would have any real value or represent actual facts." It is hardly necessary to point out that these two statements are contradictory, for the formation of a table-of-rates is nothing more than the establishment of fair averages for soil classes.

Then a majority of the Rajshahye Conference say that the abolition of the rate would be unjust to the zamíndárs, as the ground is "the only easy one to prove." They nowhere, however, assert that a prevailing rate exists, while, like the Burdwan Conference, they admit that, "excepting a few special localities under very different circumstances from the greater part of the country, no table-of-rates could be framed that would be of real use, and that ought to be used." Moreover, they add the significant remark: "The rates for the same qualities of land held by the same class vary in contiguous estates owing to the zamíndár being rich and lenient [and the others being] poor and exacting or pressed by family marriages and law-suits." No stronger admission than this could, in the Lieutenant-Governor's opinion, be made of the non-existence of "prevailing" rates throughout the Rajshahye Division, while the provision in the Bill of an easily workable plan of enhancement removes the Rajshahye Conference's only argument in favour of retaining the Bill as it stands.

The fact is that the only definite statements in favour of this provision of the Bill are to be found in the reports of the Presidency and Bhagálpur Conferences. It is "the belief" of the Bhagálpur Conference that "a prevailing rate can generally be discovered in this part of the country, if not for a whole pargana, at least limited to villages or groups of villages in the same estate;" but that belief is unsupported by any fact, while it is admitted in the 13th paragraph of the same report that the retention of this provision of the Bill is calculated to injure the class of occupancy-raiyats. The Presidency Conference assert that it is "the experience of all who have had to deal with settlements that such rates prevail over moderate areas." Yet that is a statement on which the zamíndárs themselves have not ventured, and which the Lieutenant-Governor must pronounce to be either incorrect or misleading. If by it is meant that settlement proceedings satisfactorily show prevailing rates to exist in zamíndáris contiguous to the tracts under settlement, then it is incorrect. Settlement proceedings are notoriously untrustworthy on the point. If it means that such proceedings show prevailing rates as existing in the estates under settlement, it is misleading. In settlements, lands are classified and rates made—not always, as this Government has reason to know, with success. But it is an obvious fallacy to infer from the discovery of such factitious rates at a subsequent re-settlement that prevailing rates exist where settlements have not already been made. It is not to be forgotten that the Commissioners and Collectors of the Presidency and Bhagálpur Divisions, where now the possibility of ascertaining a "prevailing rate" is asserted, reported in 1882, after special enquiries instituted in Wards' estates, that no trace of the Pargana Rate existed (Bengal Report, 1883, Volume II, Appendix iii).

In the presence of the evidence on the subject, the ground of the prevailing rate is, in the judgment of this Government, no longer defensible. The fact stands proved that if this ground of enhancement were ever legitimate, its legitimacy has passed away; while significant instances have been cited of its fraudulent use. The Eastern Bengal Landholders' Association aver that "what is deemed the prevailing rate in each particular locality is one of the most difficult of questions." The advocate of the rule do not contend—in the face of conclusive proof to the contrary it would be impossible for them to contend—that there is now-a-days a prevailing rate anywhere except in a few isolated tracts where the rate is overlaid and obscured by *abwabs* and cesses of various kinds. But they allege that, although there may not be one uniform rate for any class of land in a village, yet the rents generally payable for any class do approximate more or less to a certain standard. It is to be observed that by this an *average* rate is not meant: an uniform rate underlying the variations, and capable of recognition when the variations are eliminated, is what is stated to exist. Assuming for the moment this statement to be correct, the Lieutenant-Governor could never see what just or logical ground it furnished for enhancing one raiyat's rent up to the level of another's. Since the pargana rates which appealed to the rent-paying capacity of all raiyats, and consequently of each raiyat, were destroyed, since rents were increased by zamíndárs at discretion, and differentiated according to each raiyat's inability to resist, it is difficult to find the reason for making one man's rights the measure of another's. But the statement was never admitted by this Government to be correct. It has been disproved by the special enquiries instituted in 1882-83. If more proof be now wanted of the incorrectness of the statement, it is forthcoming in the ample evidence supplied by these reports of the impracticability of framing tables-of-rates without granting to the officers employed in framing them full powers of interference with existing rents. On this point the reports are accepted as conclusive by the Lieutenant-Governor against the practicability of framing tables-of-rates without seriously altering existing rents. So far they fully support the opinion expressed in Raí Kristodás Pál's dissent. The inevitable conclusion, therefore, is that if it be impracticable without interference with existing facts, to *construct* a prevailing rate, it is clearly impossible to *discover* one.

To conclude it may be stated that the "prevailing rate" is condemned by the weight of authoritative opinion as illogical, unnecessary, and mischievous. It is illogical, for it regulates a raiyat's liability, not with reference to his own rights, but with reference to rights which it is not his business to maintain. It is unnecessary, for in the provisions for enhancement on the ground of landlord's improvements, rise in prices, and registered contracts, ample facilities are afforded for increase of rents. It is mischievous, for if ever there was any probable foundation for it in the survival of pargana rates, that foundation no longer exists; while without any such foundation the rule places the rights of the vast body of cultivators at the mercy (as the Legal Remembrancer says) of the "feeblest, stupidest, and the most venal of the class."

41. *Mr. Dampier's proposed substitute for the "prevailing rate."*—In the paper on this question submitted by Mr. Dampier, that experienced officer seeks to reconcile the "prevailing rate" with equity by proposing an amended provision to the effect that rent shall be enhanceable, in the absence of special reasons, when the rent paid by the raiyat is unduly low with reference to the rates of rent which prevail in the *vicinity* as payable by occupancy-raiyats for land of a similar description and similar advantages: provided that one recognized rate is established in the *estate* as the prevailing rate of such land. No doubt Mr. Dampier's proposal would avoid some of the evils of the present law, and if the remarks which I am to make on the question of framing tables-of-rates, and the modifications I am to propose on the subject, induce the Government of India to retain Chapter XI in the Bill, the Lieutenant-Governor would be disposed to accept the amendment, provided (i) that for the word "vicinity," "village or estate" be substituted, and (ii) *that the "established rate" be that framed and promulgated by the Government under Chapter XI.* A prevailing rate thus established would have an approximate relation to the rent-paying capacity of each raiyat. That which is now miscalled the "prevailing rate" has none.

42. *Enhancement on ground of rise in prices.*—I am now to offer some remarks on clause (*b*) of section 43—enhancement in proportion to a rise in the average prices of staple food-crops in the locality. This ground of enhancement seems to the Lieutenant-Governor to be at the present time fair and legitimate, and he goes the length of saying affords ample compensation to zamíndárs for the withdrawal of other grounds. No doubt it may be worked with injustice to the raiyat, as Mr. Wilson, Collector of Midnapur, and Mr. Norman, Collector of Muzufferpur, point out; and a rise in prices owing to diminished production or crop failure would obviously be no just ground for an enhancement of rent. There is also need of better administrative arrangements than now exist to procure accurate price-lists. These, however, are difficulties which may be overcome by the courts in the one instance and by the Executive Government in the other; they are objections to the application of the principle, not to the principle itself.

43. *Its principle considered.*—To the principle itself, as far as Mr. Rivers Thompson has observed, no objection has been made, for the objection to the exclusion from the price-lists of staples other than food-crops is in reality a matter of detail. With that proposal I am subsequently to deal; here I am to discuss the question whether a scheme of rent enhancement may be unobjectionably based upon the market variations in the price of corn. The first point to consider is this. Can we count on such a normal increase in the price of corn as the scheme contemplates? If this question be judged by the past history of prices in Bengal, the answer must be in the affirmative. We have abundant evidence to prove that there has been a steady normal rise in the price of corn since the beginning of the century. The price of rice has

doubled within that period, while the price of more valuable grain, such as wheat, has risen in greater proportion. Judged by the past range of prices, then, it would seem that the principle propounded in the Bill is fair to both landlord and raiyat.

But here the doubt occurs—can we judge of the future of prices by their past? Some political economists hold that, although the price of corn advances (normal permanent advance is what is here referred to) in the early period of a nation's growth, it at length reaches a point beyond which it exhibits no permanent tendency to further increase. Is this theory true, and if so, has the stationary stage been reached in Bengal? The most prominent advocate of this theory, as far as the Lieutenant-Governor knows, was that distinguished economist, the late Professor Cairnes,* unless, indeed, Adam Smith's view (contradicted, however, by Mr. J. S. Mill) as to the steadiness of the prices of corn, comparing century with century, be considered an equivalent. Professor Cairnes' explanation of the theory is that an advance in the price of staple food, after it attains a certain elevation, inevitably re-acts on population. Thus checking the demand, the re-action arrests the extension of cultivation, and, by consequence, the normal price.

* Leading Principles of Political Economy, Chapter V.

Now, admitting the truth of the theory, a little consideration will show that the repressive influences on prices referred to are not now in operation in Bengal, and probably will not be, if they ever be, within any measurable period of time. Population in Bengal is, we know, increasing, and so is the demand for food. Even if the local demand were stagnant, which it is not, the foreign demand is daily growing, and foreign demand affects prices not less than local demand. There are, therefore, none of the causes at work in Bengal, which, according to economists of Professor Cairnes' school, check the upward tendency of the price of corn. No doubt it is true that improvements in agriculture tend to increase production, and so to lower prices. But as Mr. J. S. Mill says: "In a society which is advancing in wealth, population generally increases faster than agricultural skill, and food consequently tends to become more costly.†" The relevancy of this observation to Bengal will be the more apparent if it be remembered that the time when agricultural improvements will increase production is still distant. Even if that time comes, the expansion of the export trade of the country will have increased the demand and so established an upward tendency in prices. For these reasons the Lieutenant-Governor thinks that there is no reason to expect any cessation of the increase of prices, and he therefore accepts the proposals of the Bill as founded on a sound and workable principle. Should his anticipations in this regard not be realized; in other words, should the price of corn cease to rise, enhancements on this ground will then come to an end, and landlords' rents become stereotyped at the highest point that the land can afford to pay.

† Political Economy, Book IV, Chapter II, section 3.

44. *Can it be in proportion to rise in price?*—If, then, to the principle of enhancement of rents on the *ground* of a rise in price of staple food-grain no valid objection can be offered—are there objections to an enhancement in *proportion* to the rise? To this question I am to reply that there are very serious objections indeed, which are apparent throughout the reports, and which take the shape of an almost unanimous expression of opinion that before decreeing enhancement on account of a rise in prices, the courts should make an allowance for an increase in the cost of production. In this view the Lieutenant-Governor fully concurs for reasons which I am now to state with some fulness, as special attention was directed to this point in the letter from the Government of India in May last.

*Case of Capitalists farming for profit.*—The question is whether, in allowing an enhancement of rent on the ground of a rise in price, allowance should first be made for increased cost of production. This question naturally divides itself into two heads—(*a*) when cultivation is carried on for a profit; and (*b*) when it is carried on for subsistence. The first case is not a common one in Bengal; but there are doubtless some such cases, and it is therefore desirable to show briefly that before the landlord can secure an increase of rent the farmer will have secured full compensation for increased costs of production. It will be admitted that when production is carried on by capitalists farming for a profit, and not by ordinary raiyats farming for subsistence, rent does not enter into the costs of production. The price of corn is, however, determined by the cost of producing the most costly portion of the general crop, and hence it follows that the only connection that can be established (in the case of capitalist farming) between rent and the prices of corn, or between the increment of the one and of the other, is that rent must be so adjusted as to give farmers, taken as a class, the average profits which capital commands in other branches of industry. But what the profits of capital may be in the particular case depends on the "haggling of the market" between a landlord wanting all and a farmer wishing to keep all. The result will be a compromise in which competition among landlords, on the one hand, and among capitalists on the other, secure to farming of this sort a profit which necessarily includes a just allowance for increased cost of production from whatever cause arising. Hence it follows that you cannot legislate for the same percentage increase of rents as of prices, although you may accept the fact of a permanent increase in the price of corn as *primâ facie* establishing the justice of some increase of rent.

*Case of tenant farming for subsistence.*—Coming now to the case, which in these Provinces is by far the more general case, in which cultivation is carried on, not for a profit, but for subsistence, I am to observe that the preceding considerations do not apply. The distinctive difference between this case and the former one is that the raiyat is not in a position to "haggle" with the landlord. Tradition, caste, and poverty bind him to the soil; while custom is the only influence which moderates the demand which the landlord in this matter practically a monopolist, can enforce. In other words, the rent which raiyats, cultivating for subsistence, can pay is governed, not by competition as expounded above, but by custom, or by a species of one-sided

struggle between the numbers who want land and the one who has land to give. In this case rent is undoubtedly an element in the cost of production; for the raiyat not having capital, and not working for profit, must labour on until he obtains from the land the price wherewith to pay for its use. Payment for the use of land, in other words rent, therefore forms an element in the cost of production. Thus, if prices were regulated by costs of production alone, the variations of prices would have some direct connection with variations of rent, though even in this case the connection would be indefinite and obscure, seeing that rent is not the most prominent factor in costs of production. But prices vary more owing to the operation of demand and supply than owing to the ultimate law of costs of production; and therefore in this, as well as in the preceding case of capitalist farming, it is impossible to lay down any law governing the variation of rent in relation to prices, and, least of all, a law of arithmetical proportion as the Bill does.

The matter may also be looked at in a less technical and more concrete way. Let us take a simple case which, however, is proved to be almost a typical case by the unerring certainty with which even a slight eccentricity of season—the commencement a few days later, or the cessation a few days earlier than usual, of the periodic rainfall—affects large classes of people throughout these Provinces. Let us suppose the case of a raiyat who cultivates a holding the produce of which suffices for his subsistence and ordinary wants and for the payment of his rent. He produces yearly $(a+b)$ maunds of rice, consumes $a$ maunds and sells $b$ maunds to pay his rent. In this case, as long as the land yields the requisite produce and the raiyat's wants do not grow, he can afford to pay an increase of rent proportionate to the increase in prices; and, as the Government of India say in their letter of the 4th of May, "the landlord would be protected from the loss now arising from the diminished purchasing power of silver in relation to grain," while "the standard of rent as expressed in grain would not vary." But the raiyat's wants do grow, while to meet them there cannot be an increase of produce except by such an increased application of capital and labour (giving proportionately less return) as we cannot hope for in the case of a raiyat cultivating for subsistence. In the case we are dealing with there is *ex concessis* scant capital, while in such a climate as that of India where continuous labour is exhausting, industry is not increasingly applied unless stimulated by exceptional reward. If, then, a dead-level, or rather a descending scale of poverty, is not to be maintained, the $a$ maunds must in course of time prove inadequate for the wants of the raiyat and his family; and as he and his family must live, the $b$ maunds will be trenched upon. The landlord's rent must therefore suffer. In other words, in a case which every one with knowledge of these Provinces must admit to be, if not everywhere a typical, at all events a common one, rents cannot possibly rise in direct ratio to a rise in prices. This conclusion is the more inevitable if regard be had to the increasing cost of labour, live-stock and other necessaries of cultivation and of living, to which attention has been called in the reports, as well as to the necessity which exists in the larger portion of those Provinces for improvement in the ordinary raiyat's condition and standard of comfort. Failing to fully appreciate these circumstances, Mr. D'Oyly, Collector of Bhagálpur, has been led to think that a rise in price always allows for increased cost of production. This is true only when the ratio of increase in cost of production and of living does not exceed the ratio of increase in price.

*Allowance to be made for increased cost of production.*—Thus the conclusion to which the Lieutenant-Governor comes on this aspect of the question is similar to that deduced in the case of capitalist farmers. The conclusion is that, while a permanent increase in the price of corn may be regarded as presumably justifying an increase of rent, the latter cannot be in arithmetical proportion to the former. This conclusion is in entire harmony with the almost unanimous opinion of local officers, that allowance should be made for increased costs of production. The Lieutenant-Governor need hardly observe that it also coincides with the existing law as declared in W. R., Vol. VII, page 94, where the well-known ruling in Thakurani Dassya's case is brought into harmony with the agricultural facts which surround us. The Bill recognizes in section 48 that no tenant should be called on to pay a rent which is "unfair or inequitable." By this the Lieutenant-Governor understands that the rent shall be such as a *solvent tenant can pay, and yet prosper.* Such a rent you cannot get without making full allowance for increased cost of production. In other words, you cannot safely decree an enhancement of rent because prices have risen. The rise in price may have brought little good to the raiyat, whose crops, owing to soil deterioration or inadequate moisture, may have failed over a series of years, or whose legitimate expenses in raising the crop may have risen more than prices have. The net result, then, is that, although as a working rule it may be fair to decree an enhancement of rent on the ground of a rise in price, you must allow the raiyat to prove the exception to the rule.

Having regard, then, to the preceding considerations, the question arises should the determination of a "fair and equitable" rent—in other words, the determination of the extent to which the rise in prices should be discounted with reference to increased costs of production—be left to the courts, as it is now both by the existing law and by section 48 of the Bill; or should some working rule be laid down for the court's guidance? On this point the reports are not precise; but some officers advocate an allowance for costs of production, ranging from one-third to one-half the percentage rise in prices. Mr. Boxwell, Collector of Gya, propounds a different and more ambitious scheme, whereby, in his opinion, the true rent which should be paid for land might be determined. As far, however, as the Lieutenant-Governor understands it, Mr. Boxwell's scheme seems totally impracticable, for, having as its basis the *point of fertility* at which the surplus produce is divided, it depends on the ascertainment of a

fact which we know by common experience, as well as on the high authority of Professor Bonamy Price, to be unascertainable by any formula.* It is further imperfect because it omits to take account of the other factors, such as distance from markets, facilities for cultivation, foreign demand, which all combine to influence rents. On the whole, the Lieutenant-Governor is strongly of the opinion that a working rule should be laid down for the guidance of the courts upon this very difficult point. It will be remembered that the difficulty of ascertaining the net value of the produce; in other words the difficulty of ascertaining the costs of production, was one of the chief causes why the existing law of enhancement has proved unworkable. It is clear now that before rent can be enhanced under this Bill, the increase in the costs of production must be discounted; and thus, if no working rule be laid down, the courts must attempt again a task which experience has shown they cannot accomplish.

*Practical Political Economy, Chapter X.*

*Measure of such allowance.*—But although it would be impossible for the courts to determine in each case the exact increment in the costs of production, it would be a less difficult question to determine whether the increment had been greater or less, and approximately how much greater, or how much less, than the rise in price. Given a rise of 25 per cent. in prices, the court might, with a probability of general correctness, say whether the increase in costs of production had been 12 per cent., or more or less. No doubt there still would be difficulty, but no difficulty comparable to that which now exists in connection with net values. This remaining difficulty would, however, be altogether overcome if a rule could be laid down fixing the percentage of increase of rent at a certain proportion of the increase in prices. Some officers propose to divide the rise in prices equally, giving one-half to the landlord as increased rent, and one-half to the raiyat as increased cost of production. Thus if prices rise 25 per cent. they would increase the rent 12½ per cent. and allow the other 12½ per cent. to go as an allowance for increase in cost of production. This is a proposal which the Lieutenant-Governor desires to bring prominently to the notice of the Government of India. If it be accepted, he would withdraw altogether the limitation on enhancements imposed in section 45 (*b*). He would allow the landlords the full benefit of a rise in prices, subject to that deduction for increased costs of production, and to the ultimate produce limit to be referred later on. To improving landlords the Lieutenant-Governor would allow a larger increase, as I am in the sequel to explain, for they should benefit by increased productiveness as well as by higher prices.

45. *Should the rise in prices be calculated in staple food-grain crops alone?*—Then it is to be considered whether the rise in prices should be calculated on staple food-crops alone, or whether any other crop, such as jute or sugarcane, should also be included as the basis of such calculation. It appears to the Lieutenant-Governor that no benefit would accrue to the landlords by widening the data of calculation, while great difficulty and uncertainty would be caused in framing tables of local prices. It is to be remembered that for many non-food crops, such as indigo and opium and ganja (reference to which is made in the Reports of the Patna and Rajshahye Conferences as possible staples for price-lists), there is no local market at all; while at the market in which they do sell their prices are very complex things indeed, including manufacturers' profits and interest on capital, besides being monopoly prices to boot. In the circular letter of 24th May, the Lieutenant-Governor desired information as to whether such a relation existed between any non-food crop and food-grains, that the area under one contracted while the area under the other expanded according to the less or greater demand. If such a relation existed, it might be inferred that the costs of production of both crops nearly approximated, and that the one was as suitable as the other as a basis for calculating rent enhancement. It now seems that such a relation exists to some extent only in the case of rice and jute; but the Dacca Conference would not, on that account, recognize jute as a staple, owing to the great fluctuations in its price. No doubt the price of jute does fluctuate greatly. A reference to the statement appended to my circular letter of 24th May will show this. But it will also show that over a series of years these fluctuations so far neutralize each other that on an average there is neither rise nor fall. To judge from that statement if jute were made a staple crop, we should have zamíndárs in a few years dissatisfied with a settlement for which they now clamour. In the Lieutenant-Governor's opinion staple food-grain forms the best index of the producer's permanent capacity to pay an increase of rent. This is the reason why he thinks that on this point the Bill needs no alteration. What we want to ascertain is the normal rise in prices. The commodity in which that normal rise is most clearly apparent through the fluctuations of the wholesale and retail market rates is the commodity most suitable for our purpose. That commodity is corn.

When entertaining these opinions, however, the Lieutenant-Governor has no desire to oppose the Government of India if it wishes that the courts trying rent-suits should have regard to other staples than food-grain brought to market as raw produce. He fears indeed that such price-lists would not be found valuable, while they might be often dangerous, and he is quite certain they would be very difficult to prepare. It need not have been added, had not misconceptions prevailed on the point, that the question of absolute value of produce is altogether foreign to the scheme embodied in these provisions. It is of course to be understood that it rests with the raiyat to grow what crop suits him best, without thereby subjecting himself to pay increased rent. For instance, if a raiyat in 1885, paying Rs. 5 for a bíghá of rice land, grows jute or sugarcane on that land, in 1886 he does not, by reason of the change of crop, render himself liable to an increase of rent. But if he happen to be paying Rs. 5 per bíghá for land in which jute or sugarcane grows, and the prices of staple food-crops rise 25 per cent., then the landlord of the sugarcane or jute field will, on the terms of the Bill as

modified by the Lieutenant-Governor's proposals, be entitled to claim an enhanced rent of 12½ per cent. on Rs. 5, the rent of the field.

46. *Authenticity of existing price-lists.*—Next the question arises can the increase in prices, necessary for the decision of suits instituted during the next 15 years, be safely determined on the data now existing. Here it must be admitted that general distrust in the accuracy of the published prices-current is expressed in the papers; while, owing to the non-preservation by most grain-dealers of a record of old prices, fears are entertained that it may not be possible to correct our published lists. This result does not surprise the Lieutenant-Governor. There is in Bengal no organization for collecting statistical information, and no agency to check or supervise the record of even such important information as the prices of staple food-grain. It is to be hoped that matters in this respect will improve in connection with the Agricultural Department, which will come into operation at the end of this year, and from the beginning of next year it is believed that the prices-current will no longer be open to animadversion. Every year of improved statistics that passes lessens danger to be apprehended from the existing price-lists.

47. *Presumption as to their practical correctness.*—With all this, however, the Lieutenant-Governor does not admit that the existing price-lists are, to any noticeable extent, untrustworthy evidence for the purpose in hand of the extent to which prices of staple food-crops have risen within the last 15 years. There is no reason to believe that false returns have been made. The source of error is chargeable rather to the ill-selection and confusion of figures than to the falsification of facts. The error seems to have been constant, for the system has been unchanged. To this view some support is lent by a comparison which can be instituted between the ratio of increase in the price of rice from 1869 to 1883, as exhibited in the published price-lists of the Pubna district, and as shown in the prices recorded in the books of a rice-exporting English firm at Serajgunge, the largest rice-mart in North Bengal. The figures which are reproduced as an appendix to this Report exhibit the noticeable fact that, although the individual prices differ for almost every month of the period, the ratios of increase or decrease between each quinquennial period closely approximate. The official returns show an increase of 21·5 per cent. during that period, while the merchants' figures show an increase of 23 per cent. Possibly this small difference may be explained by the fact that, while the official returns refer to the head-quarters of the district where trade is slack, the merchants' figures refer to prices at a mart where trade has always been large and brisk.

As it is the *ratio* of increase or decrease which the courts will want under this Bill, the facts referred to in the preceding paragraph seem to indicate that after all the existing data are not so unreliable for the purposes of the Bill as some suppose, and this the Government of India will observe is the opinion of many officers entitled to speak with authority on the point. The same fact—that it is the proportion of increase or decrease in price, not the absolute value that is required—would also seem to furnish an answer to those who think that as the rayat sells his produce unhusked, what we have to look to is the price of paddy, not of cleaned rice. The Lieutenant-Governor believes it practically safe to assume that the proportion of increase or decrease in the price of paddy does not materially differ from the proportion based on the prices of rice. He would have less objection to provide in future for the exhibition in the prices-current of the prices of paddy as well as of rice had it not been that paddy is usually sold wholesale, and is therefore not always to be had in the smaller markets. Still in many places it is no doubt possible to show the prices of paddy as well as rice in the official lists, and if considered desirable this may be done.

48. *Area and period for which price-lists should be prepared.*—Next, the question arises for what area, and for what periods of the year, these authoritative price-lists should be prepared. The Officiating Commissioner of Chittagong remarks "that a general average of the prices prevailing at all seasons of the year in the subdivision is as useful for purposes of comparison with another general average of the same area prepared in the same way for any subsequent year as the most elaborate and carefully prepared statistics of market prices at harvest times only." Mr. Weekes, Collector of Purneah, in his dissent, appended to the Report of the Bhagálpur Conference, appears to share the same view.

The questions thus raised, whether the lists should be for large or small areas, and whether of prices prevailing at harvest times or the average of the entire year, depend greatly for their importance on the objects aimed at. If the object be to ascertain the gross produce limit on rents, no doubt the prices prevailing at harvest time should be taken. The raiyat has to part with his grain at harvest time to pay his rent, and obviously the amount of his rent should be measured by the value his produce then beings in. In dealing, however, with enhancements of rent on the ground of a rise in prices, the question is altogether different. In this latter case we have to deal no longer with absolute, but with relative prices, and here the Lieutenant-Governor is not disposed to differ from those who think that the all-the-year-round retail prices furnish as sure a basis for comparison as the presumed wholesale prices of the harvest month. Authorities seem to agree that, although the *varieties* of prices may be greater in retail than wholesale dealings, the *fluctuations* over a lengthened period are not greater in the retail than in the wholesale trade. Then as to area, the Lieutenant-Governor does not think that the percentage of rise or fall would be appreciably different, taken for a sub-division, from what it would be if taken for a thánâ. There would indeed be an advantage in taking the prices at the larger station, as local disturbing causes would be eliminated, while a more careful record by better agency would be secured. On the whole, then, the Lieutenant-Governor is not disposed to differ from the officers who would bid the courts have regard to the yearly average retail prices recorded at the chief mart of a sub-division as an indication of the extent

to which rents may be enhanced. The ultimate gross produce check which, determined in one case in a village, will have been determined for many, would of course be based on the prices during these months, fixed under section 52 of the Bill by the Local Government as harvest months.

49. *Enhancement on the ground of landlord's improvements.*—It remains to offer some remarks on enhancement on the ground of landlord's improvements [sections 43 (*c*) and 46*], the chief points deserving notice here being the extent to which such enhancements should go, the time at which such enhancement should be decreed, and the measure of freedom to be accorded to landlord and raiyat to contract for such enhancement out of court. On the first point—the extent of such enhancement—the papers do not express any decided view; but, as far as the Lieutenant-Governor gathers, the weight of opinion is in favour of leaving the matter to the discretion of the Courts. In this opinion Mr. Rivers Thompson does not entirely concur; he is willing to leave the courts a large descretion, but he would at the same time guide that discretion, and limit it by declaring that while the court should decree such an enhancement as shall be fair and equitable having regard to all the circumstances of the case, the enhanced rent shall never be more than double the former rent.

* Where an enhancement is claimed on the ground of landlord's improvement—

(*a*)—The Court shall not grant an enhancement unless the improvement has been registered in accordance with the Act.

(*b*)—In determining the amount of enhancement the Court shall have regard to—

(I) The increase in the productive power of the land caused, or likely to be caused, by the improvement;

(II) The cost of the improvement;

(III) The cost of the cultivation required for utilising the improvement; and

(IV) The existing rent and the ability of the land to bear a higher rent.

(*c*)—The Court may make its decree conditional and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

*Should it be decreed before improvement is effected?*—Then as to the time at which such enhancement should be decreed, the Lieutenant-Governor understands from section 91 that the section is not meant to cover cases in which enhancement decrees are given before the work is actually completed. He has therefore no objection to offer to the section, although he observes that the Burdwan and Patna Conferences think that no increase of rent should be allowed before the effect of the improvement has reached the raiyat. There is, however, the point of contracts for improvements made out of court. In regard to them the question is, should such contracts be allowed before the improvement is completed? On this point the Lieutenant-Governor would say that enhancement made conditional on improvements to be executed is not unlikely to cause dispute. The Government of India will remember that the point was raised in the Resolution which the Lieutenant-Governor recorded on the Report of the Court of Wards for 1882-83. In the views then expressed by the Lieutenant-Governor, the Government of India did not altogether concur, thinking that a liberty to contract for increase of rent, conditional on the completion of improvements, was calculated to make landlords improve. When recording his Resolution, the Lieutenant-Governor was not insensible to the importance of that consideration; but he had in mind actual cases, improvements which, while fully answering the expectations formed of them, had, by producing unforeseen effects, rendered barren the soil they had been devised to fertilize. In such a case as this (the hardship of which no doubt clause IV of section 46 would, to some extent, mitigate) an increase of rent would be impossible, and a previous contract to pay an increase could only lead to ill-feeling if not to litigation. It may, indeed, be argued that such cases are exceptional, and that in the long run more advantage accrues to the community by stimulating the spirit of improvement than by avoidance of all risk. Through the self interest of individuals also the risk is minimised. If such be the judgment of His Excellency in Council on the considerations now submitted, the Lieutenant-Governor will respectfully defer to it. In this case, however, he would suggest that a provision be made whereby a raiyat, who has by anticipation contracted for an increased rent, may be relieved from his contract, or have it reasonably modified, if the anticipated effect be not at all or only partially produced. Secure in the contract the landlord or his agents may fail in their part of the bargain.

50. *Enhancement by registered contract.*—The provisions of the Bill on enhancements by suit being thus disposed of, I am to revert to section 41—enhancement by registered contract. To the principle embodied in that section the Lieutenant-Governor accords his fullest approval; but with the limit he is dissatisfied. Many of these limitations on rents, which the Presidency and Rajshahye Conferences think unfair to the landlord, the Lieutenant-Governor thinks dangerous to the raiyat. He cannot divest himself of the apprehension that not only will they be worked up to, but that in the near future they will become the ordinary measure of rent. This was the main reason why he accepted the abolition of the gross produce limit. Under the Bill as it then stood, there was the fear that the other landlords, though more reticent, would be no less ready than the Bihár landlord† to work ceaselessly up to it. If these fears were realized, it would be calamitous. The Province would be pauperized. Yet our only hope of their not being realized lies in the raiyat's independence, which all our experience teaches us to mistrust. Mr. Rivers Thompson dreads these wide margins to enhancements of rents, which over large areas are already too high. He dreads them more out of court than in court, notwithstanding the attractive guise of amicable settlements, for he knows from experience‡ that when scrutinized those "amicable settlements" too often stand forth in less pleasing colours.

† See paragraph 20 of the Lieutenant-Governor's letter of 27th September, 1883.

‡ For cases in point see the Reports on the Maimansingh rent disputes, recently submitted to the Government of India.

The fact is that the margins of enhancement given in sections 8, 41, and possibly in section 45 of the Bill, are excessive. Unless the Bill gives them a *quasi* title to do it, few landlords in these Provinces now-a-days would venture to ask for an enhancement of 25 per cent. on rents of old arable land every fifteen years. Be it remembered that such enhancements would *quadruple* the rent in less than a century—a result which the Lieutenant-Governor cannot think has been sufficiently realized. It is a fact that, in Bihár, rents are already too high. This point was well brought out by the Hon'ble Mr. Reynolds in his note on enhancement in Bihár, printed in Appendix IV, Vol. I of Sir Ashley Eden's Report, 1881. Every Bihár official and overy impartial non-official in that Province will corroborate Mr. Reynold's conclusions, and the Patna Conference only give expression to the general view by asking for the re-imposition of the one-fifth limit. The effect of the thíkádárí system in Bihár has been to force up rents to such a pitch that they can no longer be paid even in average years. The Court of Wards has had large experience in this matter, and it can affirm the fact that the rent-rolls of Bihár estates, even more than those in Bengal, always show an unrealizable balance. That is a confession of excessive rentals. The provisions of this Bill will operate from those rents already too high, as from an assumed basis, towards still larger enhancements. They will operate with unfailing certainty too; and the Lieutenant-Governor connot regard, without the gravest apprehension, the results which they will produce throughout Bihár. He therefore, before it is too late, again appeals to the Government of India to impose an ultimate check on the enhancements of rent which this Bill will stimulate and compass. He earnestly advocates the reintroduction of the one-fifth limit taken in gross produce of staple food-crops. Under the scheme which the Lieutenant-Governor is now proposing that limit is free from the danger to which it was exposed under the original Bill. The removal of former arbitrary restrictions on enhancements on account of a rise in prices is a very important relaxation of the Bill's stringency in favour of the zamíndárs; the imposition of a maximum limit is only a reasonable safeguard, in favour of the raiyats. It is a safeguard, too, which the Lieutenant-Governor would urge can be effectively applied.

The objections to the limitation have been summed up in the 10th paragraph of the letter from the Government of India in May last, and to those objections Mr. Rivers Thompson has again given most careful attention. The main objections are three—the alleged viciousness of the rule "because it leaves out of view the enormously important element of the costs of production;" "the notorious difficulty of ascertaining the average produce of different classes of land, or the produce of particular fields of which the rent was in question;" and, lastly, the danger that though "suitable in a particular locality and regarding particular crops, it might work inequitably as an uniform standard for all classes of crops and in all districts."

Now as against the proposals made in this letter, the Lieutenant-Governor submits that these objections have scant, if any, force. The first objection, it will be at once apparent, has no validity at all, because the question of cost of production under the scheme of enhancement now propounded is an antecedent to the application of the limit. It will have been decided before the limit is called into operation. This is so evident that further observations on the point are unnecessary. Then, as regards the second objection, the Lieutenant-Governor would remind the Government of India that we are not concerned with the accurate proportionment of revenue to produce, nor with investigations to be conducted in regard to every field, but with limitations to be applied in rare cases, and in those only aiming at approximate correctness. The Lieutenant-Governor does not propose that the gross-produce limitation should be the result of experiments carried out by the officers of Government. He admits that experiments give varying results, incompatible with scientific precision. Admitting this, however, Mr. Rivers Thompson maintains that precision is altogether unnecessary; what we want can be obtained by an appeal to the common sense of a jury of men interested in agriculture—experts in the matter they are called on to deal with. The general experience in Bengal is that such a jury can estimate with a wonderful degree of accuracy what a bíghá of a particular class of land should yield in average years. Such estimates are matters within their every-day experience. The business of their lives is made up of such calculations. Their shrewdness in regard to them is a matter of notoriety. The decision of the punchayát or jury would in fact give that result at which experiments conducted over a series of years would aim. A settlement-officer may be deceived in his experiments, for he aims at precision, and people are not interested in helping him; but it seems to the Lieutenant-Governor unreasonable to maintain that, because experiments aiming at scientific accuracy and regarded by those whom they affect with distaste and suspicion, give unsatisfactory results, the opinion of cultivators in the matter of their daily business should not be approximately correct. Facts, in their nature fluctuating and uncertain, are, as all legal and commercial experience goes to show, a proper subject for reference to a panchayát and body of assessors. A similar conclusion is supported by the agricultural practice of other countries. Mr. Rivers Thompson ventures to say that no intelligent farmer will be found in England, who cannot say, within a narrow margin what his wheat field, taking one year with another, should yield with ordinarily careful husbandry. The Lieutenant-Governor's experience is that the Bengalí or Bihárí raiyat is no less shrewd in his own way than the English farmer, and in connection with the chapter regarding tables-of-rates, instances of this shrewdness will be given. All that is here contended for is that this shrewdness should be utilized in settlement and enhancement suits as it is in appraisements under section 82 of the Bill. This latter section assumes the very capacity to estimate gross produce which, Mr. Rivers Thompson maintains, is available. It is hardly necessary to add that the method by which the provision might be worked would be simple. A punchayát or

jury of arbitrators would be named by both sides, with possibly a Revenue-officer as foreman, and their opinion would be practically correct, as it would be undoubtedly satisfactory.

Finally there is the last objection that the limit, though fair for particular localities and particular crops, might not be so for other localities and other crops. As far as the Lieutenant-Governor can see, the limit will allow ample room for enhancement for generations in Bengal, while if it be effective at an earlier period in Bihár, the universal opinion of impartial observers is that its application will still allow a fair rent to the landlord, while its necessity to check excessive rents in that Province is almost imperative. At all events it is clear that without such an ultimate check serious difficulty will at no distant date arise in Bihár. If uncontrolled by any check the principles of this Bill will in time lead to such progressive enhancements of rent that the people must resist or suffer. But the Machinery of this Bill they cannot resist. It will be more inexorable than the economic law on which it is based. It is to save them from its rigour; in extreme cases, to allow them, if not to prosper, at all events to live, that the Lieutenant-Governor would impose an ultimate check on rents. Such a check will be the saving of a province, which, with no light claim to protection, can ask it at the hands of Government.

But apart from the special claims of Bihár, and having regard merely to the general aspect of the question, to the small area of waste land in the more settled districts at present, to the growth of population, to the fact that prices of rice have nearly doubled since the beginning of the century,* and to the slow movement of agricultural improvements, the Lieutenant-Governor thinks it most unwise to inculcate the idea that rents may be so largely increased as this Bill seems to contemplate. An enhancement of 12 per cent., or two annas in the rupee, every fifteen years is the utmost that he would encourage landlords to look to by amicable adjustments out of the court in any portion of these Provinces. It will be too much in some portions, for it will double rents in ninety years. Therefore the Lieutenant-Governor is very strongly of the opinion that enhancement of rents by registered contract should not exceed two annas in the rupee, and that the term of such enhancement should in all cases be 15 years at least. In Bihár he would gladly make it 30 years.

* See Mr. Finucane's report on tables-of-rates in Jessore. Bengal Report on the Tenancy Bill, 1883, page 590.

51. *Reduction of rent.*—To the 51st section † of the Bill the Lieutenant-Governor has three objections—*First*, the words "like calamity" unduly limit the application of clause (*a*); *second*, the section makes no provision for the exhaustion or failure of landlord's improvements on the supposed permanency or efficiency of which enhancements may have been decreed, *thirdly*, it takes no account of rents which may be in excess of the rate established under Chapter XI of the Bill if that Chapter be maintained. In regard to the first point, there is a general agreement among the officers who have noticed it, that the expression "like calamity" would be strictly construed by the Courts. A strict construction of the phrase could not fail to be mischievous, for soil deteriorates and becomes incapable of paying rent from many other causes than those resembling a deposit of sand. The Subordinate Judge of Burdwan would retain the present law by which a raiyat is entitled to claim a reduction in his rent if the productive powers of the land are diminished by any cause beyond his control, and it seems only reasonable that if the land, owing to a specific cause, is obviously incapable of yielding less than when the rent was fixed, a less rent should be declared payable.

† An occupancy-raiyat holding at a money rent may, notwithstanding any contract to the contrary, institute a suit for the reduction of his rent on the following grounds, and except as hereinafter provided in the case of a diminution of the area of the holding not otherwise, namely—

(*a*) on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity; or

(*b*) on the ground that there has been a fall in the average prices of staple food-crops in the locality or at the usual markets.

2. In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

The second objection has been brought to notice by the Patna Conference, and their argument has been enforced by an example which, though not fully illustrative of the dangers involved, is yet a lesson and a warning. The equity of the view taken by the Patna Conference seems to the Lieutenant-Governor to need no support here, and he therefore recommends that the section be expanded so as to provide for reduction of rents where an improvement on the basis of which enhanced rents have been decreed ceases, by the neglect of the landlord or from natural causes, to effect the object for which it was designed.

The third point would be only a practical question, if the Lieutenant-Governor's proposal to retain the 'Tables-of-Rates' Chapter in an altered form be approved Rates framed under that procedure would be binding on the area operated upon, and as rates below the approved rate would be enhanceable up to it, it would of course, in justice, follow that rates above that level would be reduceable.

52. *Commutation.*—As the system of rents in kind holds in South Bihár a more prominent position than in any other portions of these Provinces, the Patna Conference have properly paid special attention to the question. The solution they offer, however, appears to the Lieutenant-Governor to be the least satisfactory portion of what is undoubtedly a most able Report. The Conference think that, while in such districts as Shahábád where people wish to commute, their wishes should not be impeded, in other districts, where such a wish is not manifest, commutation should not be countenanced. But who is to be the interpreter of the people's wishes in this matter? The people themselves, or the District Collector? And if the Collector, is no account to be taken of his predelections on a question which divides men into hostile camps? The section gives the right to apply for commutation equally to landlord and tenant. Obviously the parties interested should make their own choice, and the Bill rightly enables them to do this.

Then as to the process of commutation, the Lieutenant-Governor finds a proposal, supported by the high authority of Messrs. Dampier and Reynolds, that the commuted rent

should not exceed the rent of the road cess *jamabandi*, plus what rise in price might have occurred since the road cess assessments were last made. Barring the objection that it makes no allowance for costs of production, the proposal has an attractive air. These papers are now admissible in evidence against the landlords, and the Lieutenant-Governor sees no reason why they should not continue to be so, or why, if the raiyat wishes to abide by them, he should not be permitted to do so.

"Or during any shorter period for which returns may be available with such reduction as may seem reasonable in consideration of the tenants taking the whole risk of cultivation.

"(c.)—The expenditure of the landlord on water-rates or on the maintenance of village channels, under the system of rent in kind; and the arrangements made on commutation for continuing those charges."

The last remark the Lieutenant-Governor would make on this subject is to express general approval of the proposal to add, after sub-clause (*b*) of clause 4, the provisions quoted in the margin, which are adapted from those made by the Patna Conference.

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## CHAPTER VI.

53. *The non-occupancy-raiyat. The existing law.*—I am now to pass on to Chapter VI—the non-occupancy-raiyat—a chapter second in importance only to that which has been disposed of. The status of the non-occupancy-raiyat as ultimately defined by the Bill will, in the Lieutenant-Governor's opinion, largely affect the character of the measure, and he therefore deems it necessary to dwell upon the subject at some length. Under the existing law of landlord and tenant in Bengal, a raiyat not having a right of occupancy cannot, against the will of his landlord, retain possession of his holding. The raiyat may have been 11 years in occupation of the holding; he may have improved it and so raised its letting value; and he may be willing to pay a "fair and equitable" increase of rent. But, as the law at present stands, none of these considerations avail him. If the landlord be so disposed, he may confiscate the raiyat's outlay and deprive him of a possession which, as the statistics presented in the appendix to this letter show, would, in a few months, become a valuable property. This state of the law has, as might be excepted, led to gross abuse, especially in Bihár, where it has been made use of to prevent the accrual of occupancy-rights, and, owing to the ignorance of the people, to destroy rights which had actually accrued. The papers forwarded to the Government of India in connection with the "no rent" agitation in Mymensingh show that a similar and equally objectionable practice has long prevailed in that district, and the reports now submitted exhibit a most authoritative expression of opinion, judicial as well as executive, in favour of improving the *status* of the non-occupancy-raiyat.

54. *Previous proposals to improve the condition of non-occupancy raiyats.*—This question of the non-occupancy-raiyat's *status* was considered by the Rent Commission, who, by way of amending it, proposed that while landlords should be allowed to deal at discretion with raiyats of not longer than three years' standing, restrictions should be imposed on their power to eject all others. The restrictions imposed were the payment to the raiyat of a sum equal to a year's increased rent as compensation for disturbance in addition to compensation for the improvements which he might have made in his holding. These provisions of compensation for improvement and disturbance were not reproduced in Sir Ashley Eden's Bill, which left the landlord unfettered in his dealings with non-occupancy-raiyats in all respects except one. This was the limitation of the rent of the non-occupancy-raiyat by a gross-produce limit.

The Bill, as subsequently introduced into the Legislative Council, was in the nature of a reversion to the Rent Commission's proposals, with provisions for fixing a fair rent superadded. It was also stipulated that if the landlord refused to allow the raiyat to sit at the fair rent so fixed, the latter became entitled, on ejectment, to ten times the yearly increase of rent demanded as compensation for disturbance. Thus the pendulum had swung back beyond the point it had reached in the Commission's Bill, and perhaps it is only natural to find that it is not yet in equilibrium. In other words, the proposals of the original Bill have, in their turn, undergone a radical change at the hands of the Select Committee, the result being that the non-occupancy-raiyat chapter, as it now stands, scarcely satisfies any one.

55. *Local opinion on the subject.*—The papers now submitted must, the Lieutenant-Governor believes, convince the Government of India of the absolute necessity of some improvement being effected in the *status* of the non-occupancy-raiyat. These papers exhibit a preponderance of opinion—not of theorists but of practical men—in favour of recognizing *equality between occupancy and non-occupancy rates of rent.* That opinion has history, past and contemporaneous, in its favour, while the denial to the non-occupancy-raiyat of customary rates will, if not compensated for in other ways, infallibly lead to far-reaching mischief. The Lieutenant-Governor holds it established that while pargana rates existed, no raiyat, be he *khudkast* or *paikast*, paid more than the current *nirik*, while it is manifest from these papers *passim* that, where raiyats are strong, non-occupancy-raiyats even now not only pay no higher rates, but generally lower rates than occupancy-raiyats do. It is therefore claimed that the recognition in the law of the principle of equality of rates is only an adherence to ancient custom and a perpetuation of existing facts. With this line of argument the Lieutenant-Governor is in entire sympathy. It was the view he advocated in my letter of 27th September. It must be allowed, however, that it was easier to demonstrate the justice of the principle than to give it practical effect; and it must be admitted that this difficulty has not been abated by the report now under notice, which, though abounding in evidence of the strong feeling entertained in favour of equality of rates, are deficient in practical suggestions to that end. One proposal would prevent the landlord from imposing on a new tenant more than 25

per cent. above the outgoing tenant's rent, herein forgetting that we have, in Bengal, no official records of holdings such as the putwaries in other parts of India maintain, and therefore no means of knowing what the out-going tenant's rent was. Besides, it must not be forgotten that as the new tenant would have no fixity of tenure, his rent would in turn merely form the base for a fresh advance. Another (more specious) proposal limits the non-occupancy-raiyat's rent to the highest occupancy rate payable for similar land in the village. This proposal, besides being open to the objection just noticed, also assumes the existence of a prevailing rate which is non-existent; while if the highest rent payable by *any* occupancy-raiyat be made the standard, an obvious door is thereby opened to injustice. Besides, the ordinary case of lump rents, that is, where there is no rate per bighá specified, would obscure or defeat the operation of the proposal. Finally, the effect of *salamis* or fines on entry has not been fully regarded, nor the consideration—in itself most important—that especially in a Province where there is no record of agricultural relations to which in disputed cases appeal might be made, an arrangement suggesting antagonism betwern landlord and raiyat in the early stages of their connection is to be strongly deprecated

56. *Present proposals. Freedom of contract.*—On a full review of the question in its various connections, the Lieutenant-Governor is bound to confess that he sees nothing for it but to abandon all attempts at interfering with the *initial* rent at which land is to be left to non-occupancy-raiyats, unless under the circumstances to which reference will be made under the chapters dealing with settlements and the preparation of table-of-rates. He also fears that if we cannot directly regulate the initial rent, neither can we directly control its increments. It is not an unusual practice to maintain on the rent-roll rates which are never collected, and a 2-anna increment to such an unrealizable rate would practically have the same effect as one of 8 annas or of any other figure. If, then, no generally applicable limitation is admissible on the landlord's discretion in re-letting lands (unless the extreme one-fifth produce limit), is there to be no provision embodied in this Bill in the interest of the non-occupancy raiyat? A lease affords slight security, while such a lease as that contemplated in sections 58 (*c*) and 60 (7) would, by common consent, be injurious. It would tend to prevent the raiyat from acquiring the occupancy status. As Mr. Shore says: "To require that pattás should be given for a definite time * * * would diminish the force of that prescription which established a right of occupancy in favour of the raiyats." The lease therefore will not do, while the idea of equalizing occupancy and non-occupancy rents by direct provisions is unworkable, unless by the procedure of table-of-rates to which in its present form so great exception has been taken. Nothing remains but a choice between abandoning what is by an overwhelming weight of evidence one of the chief objects to be aimed at in this measure, namely, improving the condition of the non-occupancy raiyat, *or having recourse to compensation for disturbance*, as recommended by the Patna Conference. There can, in Mr. Rivers Thompson's judgment, be no hesitation in choosing the latter alternative.

Minute of 18th June, 1789, paragraph 482.

57. *Compensation for disturbance. Fair Rent.*—Then, as to the method of giving effect to compensation for disturbance, there can, in the Lieutenant-Governor's opinion, be as little doubt. The method was suggested in paragraph 24 of my letter of 27th September, 1883, the words of which I am here to reproduce:—"As a landlord cannot eject a non-occupancy-raiyat except in execution of decree, let the Courts in ejectment suits have jurisdiction to fix a fair rent at which it shall be optional with the landlord to let the raiyat sit or not. If the landlord consents to the raiyat sitting at that rent, and the raiyat agree, no difficulty arises. If the landlord abides by the Court's orders and the raiyat demurs, let the raiyat be ejected without compensation. If the landlord refuses to let the willing raiyat sit at the rent declared fair by the Court, then make the landlord pay the raiyat compensation for disturbance." To this the Lieutenant-Governor would now add that he thinks the compensation should be graduated according to the length of the raiyat's occupation. Three years' purchase of the "fair" rental might be fixed as the maximum compensation. Up to that limit one-fourth of the judicial rental might be awarded for each year of occupancy, unless in the judgment of the Court a less compensation would meet the equity of the case. Looking to the average value of the occupancy-right as shown in the statements exhibited in the Appendix, and having regard to the fact that in some portions of the Province valuable customary rights, possibly survivals of the pre-settlement tenant-right, are acquired by less than twelve years' occupancy,* one-fourth of the fair rental of the holding for each year of the tenancy up to a maximum of three times such rental does not seem an immoderate compensation to award to a raiyat who has possibly improved his holding, who is willing to pay a fair increase of rent, and who may be within a few months of acquiring the settled *status*.

* See the reports of the Subordinate Judges of Rungpur and Khulna, and of the Munsifs of Burisal and Attoah.

Finally, the Lieutenant-Governor would observe regarding the determination of "fair" rents, that as the Courts should, in his opinion, under this chapter as under the last, be bound to have regard to a rise in price as the main factor in the question, the Lieutenant-Governor would desire no limit in the rents they might fix. They would fix a "fair and equitable" rate having regard to all the circumstances of the case, the capacity of the land and the condition of the raiyat. They should in this case, as in the case of the occupancy-raiyat, fix such a rent as a solvent tenant can pay and yet prosper.

58. *General remarks in support of preceding proposals.*—In renewing this proposal of compensation for disturbance, the Lieutenant-Governor clearly sees that it may not do all that we want or wish. It will, it is true, protect raiyat A from having the initial competitive rent at which he was admitted in 1885 unduly raised against him in 1890, when the demand for land

has increased. But it will not save raiyat B from admission in 1890 at a higher rent than was demanded from A in 1885, and so on—competitive rents continually spreading and rising, and the stock of land available for cultivation by occupancy-raiyats being continually reduced. These are defects in the plan to which Mr. Rivers Thompson is alive; but apart from a general system of tables-of-rates, they are not preventible. Under the settlement and tables-of-rates' chapters, I am to make some further proposals in the interest of the non-occupancy-raiyat; here I am to say that, though the Lieutenant-Governor's proposals are not a solution of all the non-occupancy-raiyat's difficulties, they will afford him undoubted relief. There is the hope that a strong occupancy-title and customary rents preserved by the settled raiyat clause, and by the abolition of the "prevailing rate" ground of enhancement, may have some equalizing and moderating effect on non-occupancy rents."

The Lieutenant-Governor anticipates opposition to his proposals from those who fancy that to call any legislation novel is to condemn it, from those who would allow the landlord "at any rate to make what he can out of the non-occupancy-raiyat," or from those who think efforts to retard the action of competition on land a futile strife with natural laws. On the last point, the Lieutenant-Governor would say that to talk of the action of Government in discouraging competition for land, as a setting aside of the laws of political economy, is, to use the words of Professor Cairnes on a similar subject, "just as reasonable as to talk of precautions against a hurricane or a high tide being a setting aside of the laws of physical nature." On the other points, the Lieutenant-Governor does not think the spirit of the objectors a proper one in which to approach this great subject. We must adapt our laws to the progress of the times; and if we fail to find a precedent for our proposals in the old laws of the country, we are still justified in making them if they suit the requirements of the time and are not repugnant to popular feeling and belief. The objects which the Lieutenant-Governor has now in view are in harmony with the feelings of the vast mass of the inhabitants of these Provinces. These papers afford ample evidence of what was already a well-known fact, that capricious evictions of industrious tenants are looked on as acts of injustice and oppression. It is very true that all landlords do not evict. As a body, Bengal proprietors are not open to this reproach. In Bengal it is mainly the subordinate landlords, the middlemen, who evict or threaten to evict that they may rack-rent. To the larger body of zamíndárs in Bengal, then, if the past be an index to their future conduct, the Lieutenant-Governor's proposals will have but little application. It is different with regard to middlemen everywhere, and to some zamíndárs, mostly newly-enriched persons in Bihár. It is their conduct which justifies the precautionary legislation on the point which the Lieutenant-Governor deems essential to the success of this measure.

Such, then, are the Lieutenant-Governor's proposals on this much debated question of the non-occupancy-raiyat. They are, it will be observed, in the nature of a compromise between conflicting views, and they have not now been urged by this Government for the first time. They give to the landlords most of what they want in the shape of freedom of contract; they give to the raiyat something of what he is entitled to demand in the shape of protection against the abuse of that freedom. To say that such protection should not be afforded is to maintain that freedom shall be permitted to degenerate into license. As the Munsif of Baraset says, "it is surely no harship on the zamíndárs if, while the rent of 90 per cent. of their raiyats is changed from an almost practically fixed to an easily enhanceable one, the rent of the remaining 10 per cent. be to some extent protected."

Finally, it will not be lost sight of that the acceptance of the Lieutenant-Governor's recommendations regarding the abolition of the "prevailing rate" as a ground of enhancement is an essential portion of his recommendations under this chapter. Both recommendations form parts of a connected whole, and should be accepted as a whole. In presence of the evidence now accumulated on the point, it is only on the principle of such a protection of the non-occupancy-raiyat's position that Mr. Rivers Thompson could consent to the wide freedom of contract between the landlord and the non-occupancy-raiyat, which he is prepared to accept. Even if the views now stated on the subject of enhancement of occupancy rents, and on the status of the non-occupancy-raiyat, were not broadly based on justice and fair play, the Lieutenant-Governor thinks they might well claim some support from the concessions made to the zamíndárs on the subject of transferability, the 20 years' presumption, freedom of contract in respect to intial rents, the proposals he will make in regard to distraint, and other minor points.

59. *Bastu lands. Existing law.*—The preceding chapters of the Bill have been concerned with the raiyat's *status*; and as the tenure of homestead or *bastu* land is essentially connected with that *status*, the Lieutenant-Governor will introduce here the observations he has to offer on the *bastu* question.

The law regarding bástu in Bengal seems to be at present in an uncertain state, and legislation on the question is very desirable. It is, the Lieutenant-Governor understands, the law in Bengal that if a raiyat has an existing or inchoate occupancy-right in a holding and erects a house upon it, he will hold the bastu by the same tenure as the holding. The *bastu* portion is not separable from the rest of the holding. It is also liable to enhancement of rent in the same way as the arable land.

The question, however, is not so clear where the *bastu* is held separately from the arable land, a circumstance of frequent occurrence, especially when, on partition of an estate, the raiyat's arable land falls to one shareholder and the *bastu* to another. In this case doubt seems to exist as to the *status* of the raiyat in regard to the *bastu*, and as to the procedure applicable to him. Does his *status* depend on the Rent Law and the consequent procedure, or

does it depend on contract or custom enforceable by the procedure of the Courts of Small Causes?

In the paper contributed by the Munsif of Serajgunge, the various conflicting rulings on the point are brought together, and a reference to them is requested. The Lieutenant-Governor, however, does not entirely subscribe to the statement of the law as given by the Munsif, because some of the propositions laid down by him as to the effect of the decisions appear to be too broad. For instance, Mr. Rivers Thompson conceives that it is too wide a statement of the law to make that if a piece of land is given to a raiyat for the purpose of building a dwelling-house on it, the raiyat thereby acquires a permanent title. It seems clear, however, that judicial views upon the *bastu* question vary considerably. Apart from minor instances, this may be gathered from the apparent contradiction which exists between the important case reported at page 696, Indian Law Reports, 3 Cal., and the no less important one reported at page 960 in Vol. 8 of the same series. The law is thus uncertain; but the Courts at present would seem desirous of giving weight to any circumstance from which they can reasonably presume an intention in the grantor to make a permanent grant. All this shows the unsatisfactory state of the law and the necessity that exists for a settled definition.

60. *History of the question.*—It will be in the remembrance of the Government of India that the Rent Law Commission's Bill dealt with *bastu*, or land used for building purposes, from two points of view. Regarding such land, in the first place, as an integral portion of an occupancy-holding, and not distinguishing it from the arable land, their Bill provided for the erection, without the landlord's consent, of a brick-built dwelling-house and out-offices suitable for the raiyat and his family. Next, the Commission's Bill regarded the *bastu* as apart from the agricultural land of the village, and conferred a right of occupancy in such land if held for 12 years. Thus, in the former case, the occupancy-raiyat's title in the *bastu* was merged in, and became inseparable from, his right in the entire holding, while in the latter case the capacity of the tenant to acquire by 12 years' possession a right of occupancy in the *bastu* as apart from his arable holding was recognized. These proposals were adopted in Sir Ashley Eden's Bill, and they were, as far as Mr. Rivers Thompson understands, followed in the Bill as originally introduced into Council in March, 1883, with only such modifications as the conception of the "settled" raiyat necessitated.

61. *Proposals of the Bill.*—In the Bill now under notice, however, the provisions regarding bastu (section 216*) present a much less satisfactory aspect. Where the homestead is an integral portion of the holding, and held on the same occupancy title, there no doubt section 216, when read with sections 31 (*b*) and 87 (*f*), are no less protective of the raiyats' interests than the provisions of the former Bills. It might, indeed, be urged that the raiyat has less security against enhancement on homestead lands than could be wished; but looking to fixity of tenure alone, the protection given him would ordinarily be sufficient. When, however, the *bastu* is not comprised in the holding—a case which frequently occurs—then this Bill, by making no provision for the accrual of an occupancy title by prescription, does, compared with the other Bills, place the raiyat at a distinct disadvantage. On this point the present Bill fails to settle the law in accordance with the requirements of the country.

* When a raiyat holds his homestead otherwise than as a part of his holding as a raiyat, the incidents of his tenure of the homestead shall be regulated by local custom.

In the Lieutenant-Governor's opinion, custom alone cannot rule these cases where the bastu is not a portion of the arable holding. The reports now submitted afford convincing proof of how custom may be eluded or falsified, and of how threats† of eviction from the homestead are made the leverage for forcing up rents. The natural affection with which the people regard their homes compel them to agree to extortionate terms rather than abandon them. In many places this natural affection is recognized so far that a raiyat who loses his holding is permitted by the purchaser to retain the bastu subject to rent. That custom speaks well for the mutual sympathy and forbearance of the people, and compares favourably with the state of the law which permits the instincts and affections of the raiyat to be misused to his detriment. If a landlord have a claim to enhance the rent of arable or bastu land, let him openly assert and vindicate it; but it will not do to let the devotion which every man feels for his fireside be played upon, as those papers show it has been, the raiyat's loss and to the landlord's illicit gain.

† On this point reference is requested to paragraph 29 of Mr. Reily, the Chanchal Manager's Report, where the *modus operandi* in screwing up rents is given. Attention is also invited to paragraph 70 of the Report of the Patna Conference, as to the effect of a mere threat to enhance *bastu* rents in the Durbhunga estates.

62. *The Lieutenant-Governor's recommendations.*—On a review of the facts, then, the Lieutenant-Governor would, in the interest of all parties, provide in the Bill as follows:—

(*a*).—When the bastu forms part of an occupancy-holding, it shall be held as an integral portion of, and on the same terms as, the holding.

(*b*).—If the arable portion of the holding be surrendered with the landlord's consent, the occupancy-right to survive in the bastu. (This to provide for the case of females, minors, &c., who are unable to cultivate, but wish to retain their homestead.)

(*c*).—When bastu is held as portion of a non-occupancy-holding, the occupancy title shall accrue in bastu under Chapter VI of the Bill as in the rest of the holding.

(*d*).—When bastu is held by a raiyat otherwise than as portion of an agricultural holding, an occupancy-right in such bastu shall accrue to him as under clause (*c*); provided that where custom gives a stronger right or earlier fixity of tenure, custom shall govern the raiyat's interest in the bastu.

(*e*).—If by the established custom of the village no rent be payable for bastu, no rent shall be leviable under the Bill. If by village custom rent be payable, the rent shall be the established village rate for similar land used for similar purposes. If there be no established village rate for bastu land, the initial rent shall be fixed by agreement between the landlord and tenant.

(*f*).—If bastu rents be, by established village custom, not liable for enhancement, no enhancement shall be claimable under this Bill. If there be no such established custom, the rent of bastu land shall be enhanceable, as in the case of arable lands, in accordance with the provisions of the Bill.

The Government of India will observe in the papers a considerable body of opinion in favour of the view that the raiyat should be allowed a stronger right in his *bastu* than the Lieutenant-Governor has recommended. Thus the Dacca Conference would give a right of occupancy after three years' residence, while the Patna Conference would give every raiyat a right of occupancy at once in his *bastu*. The Lieutenant-Governor would not object to the Dacca proposal if it commended itself to the Government of India; but he regards the proposals he has now made as the *minimum* security that should be given.

There is also a considerable body of support accorded in the papers to the view either that *bastu* rents should not be enhanceable, or that they should be only enhanceable on the ground of landlords' improvements. The latter view would strongly commend itself to this Government if by *bastu* could be understood the mere site on which the raiyat's house stands. This is often the case, but more frequently the *bastu* includes the plot of land, the kitchen-garden so to speak, adjoining the dwelling-house or *bari*. In regard to such plots, the Lieutenant-Governor is not prepared to advocate fixity of rate in addition to fixity of tenure.

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## CHAPTER VIII.

63. *Instalments of rent.*—As the question of the 20 years' presumption has been already discussed in paragraph 16 above, it is unnecessary to refer to the matter here further than to say with reference to clause 3, section 64, that the Lieutenant-Governor, having regard to the rise and fall in prices, does not think a fixed proportion of the crop can be considered as equivalent to a fixed money rent or rate of money rent. The other points raised in the reports under this chapter may be dismissed with a brief notice.

The Collector of Midnapur, both in the Report of the Burdwan Conference and in the Note he has submitted to Government, raises the question whether it is desirable to legislate on the matter of instalments of rent at all. What Mr. Wilson says is substantially this—by fixing instalments of rent you break through old customs, and if you prevent harassment in some cases, you may prevent the exercise of indulgence in others. On the whole, you may not benefit the raiyats. On the other hand, it is to be observed the Bhagálpur Conference regard section 67 as a most salutary provision calculated to keep the raiyat out of the money-lenders' hands. In both views there is a large amount of reason, for certainly there is some danger in breaking in on old established custom, while there is good to be looked for in making the landlord's demand coincident with the raiyat's possession of money after each harvest. The problem is to avoid the danger while not forfeiting the good; and a way of solving that problem is suggested to the Lieutenant-Governor by the practice regarding the instalments of revenue. According to this, power should be taken in the Bill, not to fix instalments of rent, but to fix the dates when rent becomes realizable by suit. We shall thus prevent the harassment of monthly suits to which raiyats are now exposed; we shall not break abruptly with the past; and we shall leave the raiyats the choice of following the old custom or adopting the new. As few men pay their debts before they can help it, in a short time, the Lieutenant-Governor apprehends payments at the fixed dates will have superseded the present practice of monthly kists, which, moreover, is by no means an universal practice. Later on, I am to express the Lieutenant-Governor's concurrence in the High Court's view that one of the most efficient means of facilitating the disposal of rent suits is to strengthen the Courts that try them. The proposal how made would aid the Government in strengthening rent courts, as it would indicate the precise time when reinforcement would be necessary, and when they might be withdrawn. It might also be found possible to re-adjust the land revenue kists in accordance with rent kists, whenever a necessity for such re-adjustment became apparent. Finally, with regard to section 69, the Lieutenant-Governor would say that while the first clause of the section is unfair to the landlord, the second may tell hardly on the raiyat. To obviate both objections, Mr. Rivers Thompson would provide that the payment should be credited to the oldest arrear not barred by limitation. He thus would not give the raiyat an option which in point of fact he never exercises.

64. *Receipts and accounts.*—The Judge of Shahábád suggests in connection with section 70 that, if books of receipts and account forms—foil and counterfoil—were kept on sale at munsifs, and all rent-receivers compelled to use them, much benefit would result. The Lieutenant-Governor quite agrees that much benefit would result, both in the way of preventing disputes and facilitating the disposal of them by the courts should they occur. He also sees no practical difficulty in giving effect to Mr. Tweedie's proposal. As long, however, as a landlord complies with the provisions of the law in regard to the form of the receipt, it would be an unusual stretch of legislative power to compel him to buy his zamíndári stationery at a public office. The Lieutenant-Governor does not see his way to compel him to

do this by any distinct injunction, but he believes the end may be secured if courts continue to attach greater credence to systematic accounts (which negative the presumption of easy falsification) than to accounts which do not negative the presumption. The Lieutenant-Governor also thinks that Mr. Tweedie's laudable object would be furthered by the omission of the word "substantially" from section 70 (4).* There is a clear necessity that no deviation should be allowed from the form of receipt prescribed by Government. I am to attach to this report an improved form of receipt, which seems to the Lieutenant-Governor to provide all the details that need be specified, and to be suitable to all portions of these Provinces. Exhibiting the particulars of the holding on its face and of payments on its reverse side, it may be used for a single payment or for several. If the raiyat could be brought to have the various payments entered up as they are from time to time made on one receipt, the necessity for statements of account would be diminished and the proceedings of the courts in cases of disputes would be simplified. Adherence to the form of receipt now recommended should be declared compulsory, a very large portion of the raiyat's difficulties being connected with receipts. He often either gets none at all, or a defective and obscure one. The trouble incurred in framing a proper form of receipt and enacting appropriate provisions to give effect to that form will have been wasted if every rent-receiver is to exercise his judgment as to what "substantially" conforms to the provisions of the Bill. There will be universal laxity which in time the courts will come to regard with leniency. Therefore the Lieutenant-Governor would strongly urge that the word "substantially" be removed from the section. If receivers have to give a receipt in the precise form they find in the law, it will probably come to pass that they will take to ready-made cheap-bound books. Should such a tendency become general, the Lieutenant-Governor would be ready to act on Mr. Tweedie's suggestion, and meet the demand in the way proposed.

* If a receipt does not contain *substantially* the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the rate on which the receipt was given.

65. *Deposit of rent.*—The chief objection made under this head is that the provisions of section 73 *(b)** will practically free the tenant from the liability of paying rent at his landlord's kachahri, and there appears to be some reason in the objection. The Lieutenant-Governor therefore regards with favour the Legal Remembrancer's suggestion that the privilege conferred by the words "has reason to believe" should be enjoyed only by a tenant from whom, on a former occasion, the landlord had refused to receive rent, or who had been denied a receipt. Mr. Garret says that such a modification would bring the clause within the ordinary law of tender. At all events the proposal seems a reasonable one, and has the Lieutenant-Governor's support.

* When a tenant bound to pay money on account of rent *has reason to believe*, owing to a dispute or ill-feeling, the person to whom his rent is payable will not be willing to receive it and grant a receipt for it.

66. *Notification of receipt of deposit.*—Attention is called by Mr. Dampier and Mr. Beames to the difficulty of complying with section 75 (notification of receipt of deposit to all parties interested). The Collector, says Mr. Beames, has no means of knowing the persons on whom he is to serve the notice; while, says Mr. Dampier, if a notification is stuck up in the Collector's office at other seasons than kist time, the parties interested will probably learn nothing of its contents. Mr. Beames' objection is a substantial one; but it will be met by adhering to the provision of the existing law [section 17, Act VIII (B C.) of 1869], from which, indeed, there seems no reason to depart. Let the Collector serve notice on the parties in whose favour the deposit is made, and the difficulty is removed. Mr. Dampier's difficulty does not seem to the Lieutenant-Governor to make any alteration in the Bill necessary.

*Proposals regarding pasturage, fisheries, and forest rights.*—In paragraph 12 of this Report reference was made to the emendation which the Presidency Conference proposed to introduce into the definition of "raiyat" with the object of making it clear that "thatching grass" lands (*kharour*) are subject to the ordinary provisions of the Bill. As section 227 now stands, the provisions of the Act are applicable "as far as may be" only to *the recovery of arrears of rent* for pasturage, forest rights, rights over fisheries, and the like. That is to say, the Act applies to those matters only in a limited degree. Questions connected with enhancement of rent, reduction of rent, acquisition of status, &c., are altogether unprovided for. This, it seems to the Lieutenant-Governor, is not desirable. *Phulkur, tunkur, and julkur,* or forest rights, pasturage, and fisheries are now, and ever have been, dealt with as on the same footing as agricultural holdings. They are in the Select Committee's form of rent receipt and account considered as incidents of the holding. It seems therefore that they should be dealt with in a fuller measure than in section 227, and in this view the Lieutenant-Governor proposes that the provision in this head should be inserted in Chapter VIII after produce rents, and that the full provisions of the Bill should be extended to such incidental tenancies "as far as may be."

On the remainder of this chapter the criticisms made touch no question of principle, but the Lieutenant-Governor desires to notice with approval the unanimous suggestion of the Patna Conference that the words "from the threshing floor" be inserted after "produce" in clause 3, section 83, and that the words "appraisement or" be omitted from the same clause.

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## CHAPTER IX.

67. *Improvements.*—This chapter has met with wide approval, although there are officers who think that it is unnecessary. As people, they say, have not improved the land in the past neither will they in the future, while if you allow the raiyat to improve you break the bond

which should bind him in dependence on the zamíndár. On both points the Lieutenant-Governor differs. There has been a good deal in the way of improvement done by the raiyats in the past, and the future is one of promise. The other objection is not intelligible to the Lieutenant-Governor, unless, indeed, on the inadmissible assumption that an union between landlord and tenant cemented by poverty is preferable, in the public interest, to one founded upon mutual benefit.

The only points of importance raised on the first section of the chapter are—should landlords have, in the case of occupancy holdings, a prior right to improve, and should a non-occupancy-raiyat be allowed to dig a well without his landlord's consent? The Lieutenant-Governor agrees with those who, in accordance with the Bill as it stands, support the occupancy raiyat's prior right on the first point, and on the latter point he concurs with those who are in favour of the wider liberty proposed for the non-occupancy-raiyat. Mr. Rivers Thompson quite agrees in the view of the Patna Conference, that in these Provinces it is ordinarily the substantial raiyat who improves, not the landlord; and he considers it so desirable from the standpoint of general policy to encourage irrigation in the dryer parts of the Province, that no discouragement ought to be shown the raiyat in providing means to that end. In the opinion of the Patna Conference, every raiyat should have the right of building himself a well, and in this view the Lieutenant-Governor concurs, for it strikes him as peculiarly illogical and unreasonable to tie the raiyat's hands in his fight with famine, while we watch every change in the monsoon rains with undisguised anxiety. If the landlord has to pay compensation to an evicted raiyat, who has built a well, and so far insured his holding against drought, surely the landlord has his money's worth in the increased letting value of the land. There is a public gain, and there is no private loss. It is a fact that over large areas in these Provinces, dependent on artificial irrigation for a full crop, a remarkable decline in the number of improvements has taken place in recent times, except where the landlords have been driven by the baoli or metayer system to improve in self-defence. This fact the Lieutenant-Governor attributes to insecurity of title and liability to enhancement which prevails. The reclaiming cultivators of earlier times, who cleared the country from jungle and built the reservoirs and embankments which rendered cultivation possible, have been superseded by farmers holding under short leases whose interests are so little bound up with the land or the people that they do not even find it worth their while to maintain the works which they found in existence. The more secure the raiyat's title the greater his improvements. The free-holding brahmaturdars are the most improving cultivators.

68. *Acquisition of irrigation channels for landlords.*—Among the points on which the Government of India desire the opinion of this Government is "whether, with reference to landlords' improvements, it is desirable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water, and the payment of compensation; and if so, what form such provisions should take." The questions thus raised have been noticed more by the Patna than by any other Conference; but, as discussed at Patna even, the issue is not quite that raised by the Government of India. On the whole, the Lieutenant-Governor is clearly of the opinion that it is not desirable to load the Tenancy Bill either with such provisions as those referred to by the Government of India, or yet with the proposals made by Mr. Henry, the Officiating Collector of Chumparun. This, it will be observed, is also the opinion of Messrs. Burrows, Mylne, and Thomson of Behia, whose action regarding the extension of distributary channels, and experience in irrigation matters generally, is by far the most extensive of any landlord in Bengal. The questions raised by the Government of India and the Patna Conference fall more naturally and conveniently within the scope of an Irrigation Act; and as there is some probability of a revision of the irrigation law now in force in Bengal, the Lieutenant-Governor would prefer to postpone the questions for the present. The whole subject is one of extreme difficulty, and should be considered in the light of the experience gained in the Punjab, where, in connection with it, a large body of customary law seems to have spontaneously grown up. Should the Bengal Irrigation Act come under revision, he would be prepared to give to the proposal now made his best consideration.

69. *Surrender and abandonment.*—On the question of surrender the Legal Remembrancer would not raise any presumption, and the Judge of Shahábád strongly objects to "surrender" being presumed from the fact that the land has been let to another raiyat. Letting land to another raiyat over the head of the actual tenant is, Mr. Tweedie observes, a common method of ouster in his district, and, as is well known, in other districts too. No doubt the presumption raised in clause (*c*)* of section 95 was meant to tell in favour of the raiyat, and not against him. But as some officers fear that it may have the latter effect, the Lieutenant-Governor trusts that the matter will receive further consideration. It is desirable that there should be no room for misapprehension on the point. Finally, after the word "village" in the other clauses, the words "or estate" should be added. This is essential to preserve uniformity with section 26.

* (*c*) If the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

Coming now to abandonment, the Lieutenant-Governor must admit that the majority of officers have not taken the same veiw of the necessity of selling the occupancy-right that he himself, Mr. Dampier, and Mr. Reynolds take. There is, however, considerable apprehension expressed as to the effect of the section as it stands on occupancy holdings, and a compromise is suggested in the shape of the submission of a written notice to the Collector for service in the usual way on the alleged absconder before the landlord re-enters. The Lieutenant-Governor would accept the system of notice before re-entry as the minimum security necessary upon the point.

*Not to affect third parties.*—In connection with the Surrender and Abandonment clauses, the Bill, in the Lieutenant-Governor's opinion, is defective in making no provision for the preservation of registered encumbrances. It is probable, in the Indigo districts, that when the Bill becomes law, indigo-planters will adopt the salutary policy of dealing directly with occupancy-raiyats for land more largely than they have hitherto done. That policy would, if fully developed, enable planters to dispense with thikas, and the abolition of the thika-system in connection with indigo-planting would no doubt be most beneficial to Bihár. It would enable the planter to allow the raiyat a larger share in the profits of the industry than he now can afford to give him. Therefore anything in this Bill tending to impede direct relations between planter and raiyat is objectionable from the raiyat's standpoint, from the planter's standpoint, and from the standpoint of general policy. Some landlords may, no doubt, object to direct dealing between planter and raiyat. They do so now when direct dealings are in their infancy, the result of many years of up-hill administrative action. They have so long intercepted by means of the thikadari system the profit which should of right go to the raiyat that they will not, without struggle, see the growth of a healthier order of things. No doubt that newer order will be in the end to their own benefit, directly tending as it must to the prosperity of their raiyats, and therefore to the security of their own rents. But all landlords are not far-seeing, and there is every reason to fear they will object to the loss of immediate profit to themselves, which such direct dealings between planter and raiyat import. It is notorious that this feeling on the landlord's part will work injustice to the planter if not provided against. If a planter subleases land from a raiyat, pays him a *bonus* down, and a fair rent, he would find himself, through the raiyats' weakness, or collusion between landlord and raiyat, deprived of his land and his money under the operation of these sections. This position of difficulty has been forcibly brought to notice by a gentleman of very wide planting experience in Bihár, and is one which involves a tangible and real danger which should be guarded against. A provision that surrender or abandonment shall not affect registered encumbrances for due consideration effected, seems all that is required to obviate the danger.

70. *Measurements.*—There is a general agreement that measurements should be made with the local pole, to be afterwards converted into English measure if necessary, and that, if a landlord wants to measure a rent-free holding within his property, he must content himself with measuring its external boundaries. In both of these views the Lieutenant-Governor concurs, provided that the measurement be made with a chain graduated in accordance with the local standard, and not with a pole, which is very liable to give wrong results. It is desirable that the people interested should be able to follow and verify the measurements. On the second point, it seems clear that any interference on the landlord's part in the internal arrangements of rent-free tenures is undesirable. Such interference is in no way necessary to the vindication of the landlord's rights, and might be perverted to the injury of the rent-free holder. In this connection the Lieutenant-Governor desires to call the attention of the Government of India to the case reported at I. W. R. Civ. Rul. 124. There it seems decided that a lakhirajdar has the right to gradual accretions to his lakhiraj property, there being nothing in Regulation XI. of 1825 to deprive him of such a right. Would that ruling apply to rent-free holdings (which are not always *lakhiraj*), and if so, will not the provisions of the Bill have the effect of modifying the existing law to the rent-free holder's detriment?

Finally, I am to suggest that, with a view to preserve uniformity with the enhancement provisions of the Bill, the term of *ten* years in section 99 (2)* be altered to *fifteen*, and that an additional sub-clause be added to provide for the annual measurements which occur under the *bauli* system.

* A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years except in the following cases:—

71. *Managers.*—Some officers have inveighed against the provisions regarding the appointment of managers as an invasion of the rights of the zamíndárs; while the Eastern Bengal Landholder's Association say "they will deal a death-blow to the co-parcenary estates of the country." All this is unreasonable, having regard to the fact that the law has been substantially as in this Bill from times anterior to the Permanent Settlement. In the 22nd paragraph of the "Code of Regulations relative to the Decennial Settlement," provision is made for managers in joint-estates. The provision was re-enacted in section 22, Regulation V, 1812, and extended in Regulation V, 1827. It was only by Act XVI, 1874, that the procedure was impaired, and all that is now proposed to do is to give due effect to what has practically been the law of the country from the earliest days of systematized revenue administration. The Maharájá of Darbhangá, in his dissent, objects to the re-enactment of a law which "has solemnly been repealed as obsolete." The reply is a denial of the correctness of the Maharájá's statement. The Act of 1874 repealed the Regulation of 1827, not the Regulation of 1812. The latter is still in force, but in a fragmentry condition; and the proposal is to make it more fully operative in accordance with the requirements of the times. The Maharájá objects also to legislation on this point, because he has not been supplied with information as to the use made of the law in the past. It would have been impossible to meet such an unusual call without an interruption to ordinary work of the Civil Courts and delays to suitors which are not to be lightly incurred. Besides the information would be irrelevant. It must on consideration be obvious to the hon'ble gentleman that the law is likely to be of far more use in the future than in the past. In the absence of anything like a general law of primogeniture in Bengal, interests in landed property are increasingly subdivided. The original settlement-holder of 90 years ago is now represented by many co-sharers. While co-sharers were few, less recourse was doubt-

Colebrooke's Supplement, page 313.

less had to this law, but with every year that passes the numbers increase, and consequently the chances of internal disputes.

The Lieutenant-Governor, however, is willing to admit that some limitation may be reasonably imposed on the liberty of co-sharers to put the court in motion. It may not be desirable that every petty sharer should have the power of annoying the great body of proprietors, and therefore he would be willing, if the zamíndárs wish it, to accept a proposal limiting the court's action under 102 (*b*) to cases in which, say, one-fourth of the interests concerned apply. The substantial provision he regards as a most salutary one.

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## CHAPTER X.

72. *Record of rights and settlement of rents.*—This chapter appears to the Burdwan Conference calculated to stir up litigation ; but as far as the Lieutenant-Governor can perceive, it has been well received by the great majority of those consulted. For his own part the Lieutenant-Governor agrees with Mr. Dampier, late Senior Member of the Board of Revenue, in thinking it, on the whole, an excellent chapter, and he has no doubt whatever that it will be largely used and prove a boon to zamíndárs and raiyats alike. An important zamíndár on whose estates a " no-rent " cry has recently been raised has already informed the Lieutenant-Governor that he is only awaiting the passing of the Act to move Government to apply the chapter in his property. If the Lieutenant-Governor has defects of principle to notice in the chapter, they consist in its failing to provide as far as may be that during the currency of the settlement no higher rate of rent than that fixed in the settlement proceedings shall be taken from an in-coming raiyat, and in its omission to provide for the settlement of non-occupancy rents. He will take an opportunity in Select Committee to move that the chapter be so amplified as to admit of additions being made with the object just stated.

*Presumption as to undisputed entries.*—Passing to matters of detail, the only point upon which the Lieutenant-Governor desires to remark here is the provision of section 116 (2)* that undisputed entries shall be presumed correct until the contrary is shown. That provision, if unmodified, will, Mr. Rivers Thompson fears, seriously impair the effect of the chapter. It is eminently desirable that the record should be made binding as early as possible ; and although the Lieutenant-Governor quite admits the danger of making entries at once conclusive, which have been recorded *ex parte*, he thinks a date should be fixed after which they should be no longer open to question, provision being made for due service of notice on the parties concerned. If undisputed entries are not to become conclusive in this way, raiyats or landlords or both may keep away, thereby neutralizing the good effects of this chapter. On this point Mr. Dampier makes the suggestion that, if the record be not questioned within six months, it should be declared conclusive, subject, however, to a review of the order or declaration within a reasonable period. The Lieutenant-Governor would be disposed to accept that proposal. His object is to put an end to uncertainty by all means that are consistent with the necessity of letting the parties have ample notice of the facts recorded.

* 1.—Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

2.—Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

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## CHAPTER XI.

73. *Tables-of-rates. Reasons for retaining Chapter XI in the Bill.*—It has been already suggested that the Lieutenant-Governor, herein agreeing with Mr. Dampier, was personally disinclined to abandon this chapter of the Bill. He recognizes the full force of the fact that it has not been favourably received, and he admits that it would be impracticable to frame tables-of-rates in any district of Bengal or Bihár without interference with actual rents. These facts afford in his belief strong reasons against the chapter as a procedure to put in force at the will of the Government ; and the Lieutenant-Governor no longer desires that it shall be so enforceable. He thinks, however, that in many cases the chapter would be found a very valuable means of adjusting disputes between landlords and raiyats. It might be argued that all the chapter provides for in the altered garb the Lieutenant-Governor would have it assume, may be done under the provisions for the settlement of rents. The argument, however, is not true. There is a very clear distinction between both procedures, that under Chapter X being far more intricate, tedious, and expensive than that under Chapter XI, and leaving less, too, to the mutual understanding between the landlord and his tenants. If this chapter were modified so as to make its operation independent of Government initiation, it would be free from many of the objections that have been urged against it. The Rate officer would, then, without involving the Government in the dispute, have the power of altering existing rates with binding effect on all concerned subject to enforcement on individuals by the Civil Courts. A table-of-rates formed for any particular area would have a tendency to spread, and fair rents, if fixed for one estate, might affect all the neighbourhood. The difficulty in equalizing occupancy and non-occupancy rents would then stand a better chance than now of solution, as I am to point out later on.

The Lieutenant-Governor understands the provisions contained in this chapter to be based upon the practical conclusion, drawn from the litigation of the last twenty years, that

the fixing of fair rents is an intricate, economic problem which courts cannot deal with so satisfactorily as Executive Officers can. Still less can a number of courts, dealing with a number of individual cases, and unable in each case to travel beyond the evidence actually brought forward, be expected to solve that problem. This much every one who has had experience of enhancement suits under Act X of 1859 or Act VIII (B. C.) of 1869 will readily admit. It is, however, thought that this chapter is unworkable unless the fullest power be accorded the Rate officer to alter existing rents, raising those that are low, and lowering those that are high, and adapting the rates to the capacity of the raiyats individually, and as a body, to pay. No doubt if the chapter is to be workable, such powers must be taken, and there is as little doubt, that zamíndárs are unwilling to confer on the Government such a wide discretion to interfere. Still the Lieutenant-Governor considers that instances may well occur in which zamíndárs would be glad to anticipate the necessity for action under Chapter X by invoking the good offices of Government with the object which this chapter has in view. Three notable instances of such invocation of Government aid have recently occurred. One of these will be found in Mr. Oldham's minute of dissent to the Report of the Rajshahye Conference. The particulars of the other two I am here to state for the information of the Government of India. They will illustrate both the way in which this chapter would be put in operation, and the excellent effects which it might produce. The operations in both cases were conducted by Mr. H. H. Risley, C. S., late Officiating Deputy Commissioner of Manbhoom, an officer in whose accuracy of observation and precision of statement the Lieutenant-Governor places trust.

*Practical Instances.*—

"In May 1880," writes Mr. Risley, "when I was Sub-divisional Officer of Gobindpore in Manbhoom, a number of Sonthal raiyats of the Tundi estate came to me and asked me to settle a rent-dispute between them and their zamíndár by measuring their villages and fixing fair rents. On enquiry it appeared that the dispute was of more than 20 years' standing; that it had led to numerous raiyats and several attempts at murder; and that a provisional settlement made on the spot in 1871 by Colonel Dalton, the Commissioner of Chota Nagpore, was about to expire. The villages concerned, 52 in number, scattered over an estate of 150 square miles, had never been measured; rent was assessed on a peculiar unit of area—the amount of land supposed to be capable of taking a maund of seed,—and most extensive and indefinite claims were put forward by the raiyats to hold land at privileged rates as the descendants of the first clearers. The zamíndár was anxious to have the question finally settled, and expressed his readiness to agree to any reasonable proposals.

"After certain preliminary enquiries and experimental measurements (conducted with the assistance of assessors), in the course of which the raiyats took fright and addressed a petition direct to Government, the following table of rates was drawn up and accepted by the raiyats in conference with the Commissioner of the Division:—

| | Rs. | A. | P. | |
|---|---|---|---|---|
| "First class rice land | 2 | 0 | 0 | per standard bíghá. |
| "Second ditto | 1 | 8 | 0 | ditto |
| "Third ditto | 1 | 0 | 0 | ditto |

"High lands to be left unassessed during the currency of the settlement; *khundit*, or re-claimed land, to pay half-rates.

"If these rates resulted in raising the jama of any village more than 100 per cent., then an all-round rate of 12 annas per bíghá to be imposed. Settlement to be for 15 years.

"The settlement was completed by the middle of 1881, and has continued in force over since. Rents are regularly paid, and the raiyats have remained perfectly quiet, although a most bitter quarrel between the zamíndár and his eldest son, who holds some of the villages by way of maintenance, offered exceptional temptation to create a disturbance and upset the settlement. *The rates fixed for the 52 villages have been adopted not only in other villages of the same estate, but in neighbouring estates.* The settlement report was published in the *Calcutta Gazette* in October 1881, and the proceedings were then thought to have some bearing upon the table of rates procedure suggested by the Rent Commission.

"II.—Early in 1883, Messrs. Watson and Company took a lease for 21 years of the large estate of Burrabhoom in the south of Manbhoom, comprising 641 square miles of country. In respect of rent they found a state of things which can only be described as chaos. The estate had never been measured, rents were supposed to be assessed on the quantity of land that could be sowed with a maund of seed, but even for this there were no rates, and such a thing as a jamabandí was unknown. They at once proceeded to measure and to assess at the Tundi rates, the only available precedent. They settled some villages at these rates and got registered kabúliyats. Then a number of raiyats came to me and asked me, as Deputy Commissioner, to arbitrate between them and Messrs. Watson and Company, and fix fair rates. I went to Burrabhoom and met there Messrs. Watson and Company's head manager and sub-manager—gentlemen of large zamíndárí experience in Midnapur estates bordering on Burrabhoom—and about 400 leading raiyats of the Burrabhoom estate. A standard bíghá was measured and flagged out, and the raiyats were asked to consider whether the Tundi rates were fair. After two days' consultation, in the course of which the raiyats showed a marvellous capacity for estimating the gross produce of a unit of area which was perfectly new to them, they said they thought the Tundi rates too high, but that they would accept the rates fixed by the Board for the estate of Dhalbhoom in Singbhoom. These rates they stated. The managers demurred to them as too low. Eventually, after several days of further discussion, an agreement was drawn up embodying the following rates, and was signed by all the raiyats present. I do not remember the exact number, but the original agreement was about five feet long owing to the number of signatures, and took several hours to register. Similar agreements were executed afterwards by raiyats who did not attend on the first day. The rates were—

| | Rs. | A. | P. | |
|---|---|---|---|---|
| "First class rice land | 1 | 0 | 0 | per standard bíghá. |
| "Second ditto | 0 | 12 | 0 | ditto. |
| "Third ditto | 0 | 8 | 0 | ditto. |
| "*Suna* high land | 0 | 12 | 0 | ditto. |
| "Taur ditto | 0 | 4 | 0 | ditto. |

"For rice land these are the Singbhoom rates raised 2 annas. *Khundit*, or reclaimed land, was to be held at a reduction of 6 annas in the rupee according to local custom. It was agreed by the Managers that no village jama was to be raised about 100 per cent. on the previous jama where this could be ascertained, except in cases where lands had been concealed.

"*The whole estate has been settled at these rates, which were also adopted in drawing up an elaborate compromise between Government, Messrs. Watson and Company, and the ghatwals, regarding lands held by them in excess of their service-tenures.* Messrs. Watson and Company have withdrawn a large number of applications for measurement under Act X, which they filed at starting; there has been no litigation and no disputes worth mentioning. The limit of 100 per cent. has been observed, and village jamas have been kept down by leaving high lands unassessed.

"*The rates noted above have been adopted in settling excess ghatwali lands in the neighbouring estates of Patkund and Manbhoom, and in several registered transactions in those estates.*

"The effect of the two settlements may be stated thus—

"I. The Tundi settement provides a table-of-rates for—

| | | |
|---|---|---|
| "(*a*.) Estate or pargana Tundi | 150 | square miles. |
| "(*b*.) " " Nagar Kiari | 47 | " |
| "(*c*.) " " Pandra | 239 | " |
| TOTAL AREA AFFECTED | 436 | " |

"II. The Burrabhoom settlement gives a table-of-rates for—

| | | |
|---|---|---|
| "(*a*.) Estates or pargana Burrabhoom | 641 | square miles. |
| "(*b*.) " " Manbhoon | 258 | " |
| "(*c*.) " " Patkum | 299 | " |
| TOTAL AREA AFFECTED | 1,198 | " |

"Every village in Burrabhoom has already been settled at these rates. The settlements of excess ghatwali lands in Manbhoom and Patkum are now in progress. The effect of these will be to fix these rates in a number of villages pretty evenly distributed over the estates. No other rates exist; consequently no court or settlement officer could ignore these, and landlords of unsettled villages are bound to adopt them. *Each setted village is a centre from which the rates will spread.*

"Two objections will be taken to the attempt to make use of the above proceedings as an argument in favour of Chapter XI of the draft Bill. There may be more, but I will endeavour to answer these. It will be said (1) that the raiyats were so ignorant and simple that they were ready to agree to any proposal made by a Government officer; (2) that it is easy to fix rates when you have a *tabula rasa* to start with, but that such a *tabula rasa* exists nowhere out of Chutia Nagpur.

"As to the first point, neither simplicity nor ignorance can be imputed to the Tundi Sonthals. Their villages are only some twenty miles from a railway station; they had fought their landlord successfully for years; they were thoroughly versed in the machinery of agitation by way of petitions; and they perfectly understood the effect of every proposal that was made. In Burrabhoom the representative men among the raiyats were not aborigines at all; they were Uriya Mahantis and Patnaiks, and the large majority of their followers were Kurmi Mahatos. No one, I imagine, will charge men of this type with ignorance of agricultural matters or excessive respect for authority. The leaders, at any rate, were prosperous headmen of villages, with experience of litigation and no lack of money.

"With regard to the second point, the state of things I found in existence was extremely confused; but I do not think it differed in essentials from that discovered by the special officers deputed to enquire into rates in Bengal and Bihár. In every village there was a theoretical rate for the seed unit of area, but as every individual unit differed in size and component elements from every other, no general rate could have been evolved from the existing data. If the seed-units had been measured up and tables of rent compiled, I believe the results reduced to bighás would have been very similar to those brought out by Messrs. Finucane, Tobin and Macpherson. Indeed the published statistics attached to the Tundi report go far to prove the correctness of these surmises. The average size of the seed-unit in the 52 villages settled varied from 5 bighás to 34. Apply the customary rate to all the different average areas between these extremes, and you will have something very like the state of things ascertained elsewhere. Apply it to the actual units instead of the averages, and you will arrive at results even more confused.

"On the whole, then, it seems to me that actual experience justifies us in holding that the procedure of Chapter XI can be used to fix tables of *customary rents* over fairly large areas. The margin of profit left to the raiyat by a customary rent is sufficiently large to enable us to ignore minor differences of fertility, accessibility and the like within given classes of land which must be taken into account in fixing competitive rents. You could not fix competitive rents by the table-of-rates procedure, because the profit reserved on the best lands of a given class would be too small for the worst lands of that class, and *vice versâ*. Or, to put it in another way, competitive rents can only be fixed by competition; customary rents may be fixed, and have been successfully fixed, by authority."

The preceding extract, which the Lieutenant-Governor thinks both interesting and instructive, furnishes justification of his desire to retain the chapter in the Bill as a less drastic and expensive means of settling disputes than the procedure of Chapter X, to which either party may have recourse, but which the Government is not to set in motion *suo motu*. If the Lieutenant-Governor has so far carried the Government of India with him, all that need be done on this part of the question to give effect to the proposal is to introduce a slight modification into section 123. The section would then run: "The Local Government may, on the application of the landlord or of a majority of landlords or tenants, &c."

But if the chapter be thus retained, the Lieutenant-Governor would stipulate that it should contained provisions for the settlement of non-occupancy as well as occupancy rents. This he deems most necessary. He holds that, in any area in which a Table-of-Rates had been fixed, there would be no unfairness in providing that no higher rate than the standard rate should be taken from an in-coming non-occupancy raiyat. That would follow from the proposition, which is indeed merely an expression of the existing law, that from no raiyat shall more than a "fair and equitable" rent be taken. That proposal would, it is true, break in upon the freedom of contract for initial rent; but it would do so on clear, intelligible grounds. When in paragraph 40 above the Lieutenant-Governor agreed to the initial non-occupancy rent being left to contract, he stated his intention of stipulating for an exception in areas for which Tables-of-Rate might be framed.

An alternative and less satisfactory plan would be to provide that if a landlord admitted a non-occupancy-raiyat at a rate higher than the standard, such raiyat should, *ipso facto*, ac-

quire occupancy-rights. The latter would of course be less effective than the former; but it would tend to do good (*a*) in keeping down the initial rent at which the non-occupancy-raiyat is admitted to the land: (*b*) in removing the inducements to the landlord to seek out non-occupancy-raiyats in preference to settled raiyats for holdings that fall in. The Lieutenant-Governor considers the alternative less satisfactory than the first proposal.

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## CHAPTER XII.

74. *Record of khámár land.*—This chapter has been the subject of much misconception. For instance, it has been said that, under its provisions, no landlord will be able to cultivate lands that raiyats surrender, or that may otherwise fall in. The chapter, it has been stated, strikes a fatal blow at anything like large farming by resident proprietors anxious to improve the agriculture of their estates. Moreover, it has been stated, in Raí Kristodás Pál's dissent, that the definition of the Bill is narrower than the provisions of the Permanent Settlement Regulations relating to this point; while it altogether excludes waste lands, which, "it is notorious were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement."

From these statements the Lieutenant-Governor must dissent. There is no prohibition against landlords cultivating lands which, from whatever cause, may lapse into their hands. There is no injunction or obligation imposed on them by the Bill to let such lands to raiyats; they are perfectly free agents in the matter to let the lands to raiyats, or to cultivate them themselves as they please. What the Government say to landlords in this chapter is broadly this: "Your estates may be regarded as made up of two sorts of land *khámár* or demesne, and *raiyatí* or communal land. The former comprises all the land which, according to the ancient custom of the country, or according to any local practice, has been recognized as private land, *plus* all the land which before the commencement of this Act you have given evidence of a wish to permanently cultivate yourself. You are not entitled as of right to the latter. But we recognize the logic of facts, and we desire to terminate this strife by a liberal concessión to you. The communal or *raiyatí* land will include the rest of your estate. You may bar the accrual of the occupancy *status* in your *khámár* or private land. In reference to it you are given the fullest freedom of contract. But in reference to *raiyatí* land you may not bar the growth of tenant right, unless in accordance with the provisions of this Act. As regards all *raiyatí* land which may have lapsed, you may hold and cultivate the same yourself as long as you wish, but if you do let it to tenants, you must allow those rights to accrue to your tenants (subject to the payment of a fair rent) which this Act guarantees; you must not deprive them of that security which, in the public interests, it is desirable they should have." Now, that is what the Bill practically says on this subject of *khámár* land, and it needs no great insight into this subject to see how very different it is from the version which the opponents of the Bill have given, and withal how consonant it is with public policy and fair dealing.

Objection is taken by the same authority to limiting the zamíndár's vested and guaranteed rights by not declaring as khámár all the land that was waste at the time of the settlement. We have it on high authority* that from one-third to two-thirds of these Provinces was waste at the time of the Settlement, so that, if the claim be allowed, we should have to deny any agrarian rights at all, except at the zamíndár's sufferance, to some 30 millions of people! But the objection admits of ready disproof, without having recourse to the final one of public interest and policy. We have unquestionable evidence of what the Government of that time regarded as the khámár land referred to in the Regulations. This matter was dealt with in paragraph 8 of my letter of 27th September last. It was there stated on the authority of sections 37 and 39 of Regulation VIII, 1793, that under the Settlement no land was regarded as *khámár* which was not such on the 12th August, 1765, the date of the grant of the Dewanni, and that statement has remained unrefuted. It is clear from it that the land which was waste in 1793 was excluded from the definition of *khámár*. Moreover, I am now to invite a reference to Colebrooke's Supplement, page 315, which will show that *khámár*, as understood in the Rules for the Decennial Settlement, meant "lands appropriated by the zamíndárs and taluqdars of Bengal and Orissa to the subsistence of themselves and families." These words also make it clear that khámár was not waste. In Bihár there was no *khámár*, málikána lands taking their place. This antiquarian information is, perhaps, at this stage of the discussion somewhat out of place; but the Lieutenant-Governor has not thought it right to let such statements, though contradicted before, pass unchallenged now.

* Fifth Report, page 18.

As to the provisions of the chapter, the Lieutenant-Governor has no criticism to offer. They seem to him in all respects suitable.

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## CHAPTER XIII.

75. *Distraint.*—The papers no longer show any large section of opinion in favour of the total abolition of distraint, though it is to be noted that the majority of the Orissa Conference would abolish it in case of all saleable holdings and hold to the Bill in other cases. Some judicial officers would also be glad to see distraint put an end to, for, as the Subordinate Judge

of Backergunj puts it, "distrained crops are partly spoilt and partly stolen;" but on the whole there is a feeling that distraint ought to be retained in some shape or other. In Bengal it is clear that distraint is not usually had recourse to as a means of recovering rent, and there is reason to think that when used the object is as often to harass the raiyat as to recover arrears. Still the conclusion to be drawn from the evidence is that the abuse of the power to distrain is not a serious question in Bengal. Under such circumstances, it is natural to find that many officers are disposed to leave matters as they are. The Dacca Conference and the Chittagong Commissioner accept the Bill, which will not make much, if any, change in existing conditions in those parts of the country. The Orissa Conference are divided (apart from the abolitionist view of the majority) between leaving the law as it is, or accepting the draft Bill. Many Bengal officers are in favour of more stringent punishment in case of abuse if the law be left unaltered.

In Bihár there is a dislike of the provisions of the Bill. The Patna Conference prefer the existing law, though partly for reasons based on a misapprehension of the provisions of the Bill, and partly on a fear which the Lieutenant-Governor cannot appreciate. It is not correct to say that the Bill makes the raiyat deposit before he can get a remedy, while the fear that a Civil Court officer would abuse his powers more than a landlord seems fanciful. The Bhágalpur Conference (now that transferability has not been accepted for Bihár) recommend, at least so the Lieutenant-Governor understands them, the retention of the present procedure, modified only so far as that the landlord must serve on the court a duplicate of the distraint notice he is already bound to serve on the raiyat.

*Recommendations regarding distraint.*—To all these various views the Lieutenant-Governor has given careful attention. In Bihár he is clearly of opinion that the law of distraint of crops, or, as the Bihár Committee called it, *restraint* of crops, needs amendment. One of two courses is open. We may retain the existing law with sharper penalties against abuse of it, or we may proceed upon the basis of the Bill. If we adopt the latter course, then the Lieutenant-Governor would very strongly urge the substitution of section 136 of the Bill as introduced in the Legislative Council for section 220 (2) of the present Bill. If we adopt the former course, then the retention of section 220 (1) as it stands with section 186 of the original Bill substituted for section 220 (2) (as in the previous case) is absolutely essential. Of these two courses the Lieutenant-Governor would prefer the first mentioned course, because of the preference which local opinion gives to as large a measure of adherence as possible to the existing law, and because he believes that strict attention on the part of local officers to its provisions, safeguarded as they would be by the proposals now made, would preserve it from abuse. Whatever provisions should be introduced for Behar should also be extended to Bengal, and it should be made clear that an officer of the Civil Court deputed to sell or otherwise deal with distrained crops, shall be liable to punishment under section 166 of the Penal Code for any violation of the law of distraint to which he may have been in any violation of the law of distraint to which he may have been in any way a party. At present it would appear that for a conviction under that section it is necessary to prove that the particular act was *prohibited*. It should be sufficient to show that it was not *authorized* by the law.

While thus expressing his preference for the maintenance of the existing law, fortified by stricter safeguards than at present against abuse, the Lieutenant-Governor would, however, add that he has no insuperable objection to the plan proposed in the Bill, modified as he has recommended it should be. Should the Government of India prefer the plan given in the Bill, the words "or about to become due" should be inserted after "due" in the first line of section 139, so as to make that section fit in with section 141. Then the scheme would provide for the cases of *churs* and *frontier lands*, to which allusion has been made as cultivated by nomads whose crops afford the only tangible security for their rents. In this connection also attention may be called to the proposal of the Munsif of Shadaram, that collective notices of distraint might be served when there are several defaulters. The proposal would save expense.

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## CHAPTER XIV.

76. *Summary sale of registered tenures.*—In paragraph 14 of my letter of 27th September 1883, the necessity for a registration of tenures, both with reference to this Tenancy Bill and to considerations of general policy, was represented to the Government of India, and in paragraph 19 above the same subject has been touched upon. The Lieutenant-Governor has not yet submitted his proposals in a definite shape for the approval of the Government of India; but the inclusion in the draft Bill of such a provision as section 209 gives him hope that approval will not be withheld when the proposals come under the consideration of His Excellency the Governor General in Council. Should Mr. Rivers Thompson's expectations in this regard be verified, we may look forward to the registration within a moderate period of time between one and two millions of tenures, and it will then be possible to apply to these tenures, no doubt, at first tentatively and with prudence, that modification of the patní sale law procedure which the Bill enables the Local Government to introduce. We should begin by applying the summary procedure to permanent tenures held at fixed rates, and should experience justify expectation, the system would be afterwards extended. The result of a general application of the procedure to all tenures would be to give the zamíndárs, in regard to a very considerable proportion of their rent-payers, all they want, and in the way they want it, on the subject of a speedy procedure for realizing rent arrears. When, therefore, the proposals made in this

Bill on the subject of realizing arrears are declared by Raí Kristodás Pál to be "disappointing," and by the Mahárájá of Darbhangá "to intensify their present difficulties and deprive them of the little relief they now enjoy," it seems to the Lieutenant-Governor that the effects of the proposals on the registration of tenures have not been duly appreciated.

*Mr. Tweedie's Draft Procedure Code.*—On the general subject of judicial procedure, the Lieutenant-Governor feels some diffidence in commenting upon the Bill. The question is one for the Legislative Department of the Government of India. He may, however, say that no officer has proposed a substitute for this chapter of the Bill except Mr. Tweedie, Judge of Shahábád, who has developed into a draft Code the suggestions on the subject made in his report on the Bill. Mr. Tweedie's draft Procedure Code is herewith submitted for the consideration of the Government of India, and if the Lieutenant-Governor abstains in this place from expressing a decided opinion on its merits, he is free to acknowledge the industry and care which Mr. Tweedie has brought to bear upon the subject. No doubt the proposals will receive due attention in the Legislative Department.

*General opinion regarding the Chapter.*—Passing on to the provisions of the chapter, I am to say that they have been received with general approval by the officers consulted. There is agreement in the view that they will shorten and simplify procedure. Some appear to think that a modification in the High Court's rules (see Mr. Reily's observations quoted in Mr. Dutt's report) would also be desirable; but that does not seem to be the opinion of the Hon'ble Judges themselves. Probably the point may be again considered by them when the necessity for framing rules under the Bill arises.

*Collective suits.*—With regard to the question of collective suits, I am to state that if the High Court had not declared their disapproval of them, this Government, basing its opinion on the reports now submitted, would have done so. The only advantage to be got from collective suits disappears when the parties are brought to court. On this point the opinion of Colonel Samuels, who has had large experience of collective suits in Chutiá Nágpur, and who is besides an able judicial officer, is very valuable. There may be a saving in initial expenditure but that saving can be secured, as the Hon'ble Judges of the High Court point out, by other means.

*Written Statements and notes of evidence.*—The Government of India will observe that many judicial officers deprecate the exclusion of written statements [163 (*e*)], and think it unwise to dispense with notes of the evidence [163 (*f*)]. In these views this Government concurs. Experience shows that the mass of the peasantry do not state their case orally, either with fulness, or to the best advantage; while nothing simplifies the work of an appellate court more than a clear and perspicuous record.

*Payment to a party.*—Then, a very forcible objection has been taken to section 164. As the Judge of Shahábád, the Subordinate Judge of Nuddea, and others point out, the section does not provide for the common case of a plea of payment made to a third party; while by forcing the third party into court, the section may prejudice his interests. These objections are weighty, and, on the whole, the Lieutenant-Governor would be glad to see section 199 of the original Bill (which did not force the third party at once into court) restored with such amplifications as may be necessary to provide for payment made *boná fide* to a third party.

On the questions of strengthening the judicial staff, to which the Hon'ble Judges of the High Court have attached so much importance, the Lieutenant-Governor deems it unnecessary to say more here than he admits the necessity of providing adequate and efficient tribunals for the speedy disposal of rent-suits. The question is one to be discussed separately, when the prospect of passing the Bill into law is assured. The Hon'ble Judges' proposals on the subject of reducing the fees leviable on rent-suits are deserving of all attention.

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## CHAPTERS XV AND XVI.

77. On these chapters the Lieutenant-Governor has no criticisms to offer beyond that which is stated in paragraph 9 of this letter, which are not concerned with matters of language and detail. The former he will reserve for consideration in the Select Committee; and as regards the latter he thinks that there is much to be said for the view that the language of the regulations, which have received judicial interpretation, should be adhered to as closely as possible.

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## CHAPTER XVII.

78. *Contract and custom.*—The Lieutenant-Governor has carefully considered the various criticisms that have been made on section 210;* and while he thinks it desirable to modify it in some respects, he adheres to the view held by this Government that its main principles are not only justifiable but absolutely essential to the well-being of the peasantry of these provinces. To talk of the section being tantamount to keeping the people in leading strings, of its being a breach of Government guarantee and an intringement of a proprietary right, or of its being uncalled for by any established abuse of the landlord's greater power and longer purse, is to ignore alike the lessons of his-

* The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary:—

(*a*)—The acquisition of the status of a settled raiyat and of the occupancy-right (sections 24, 25 and 26)

(*b*)—The incidents of the occupancy-right specified in section 31.

(*c*)—The right of an occupancy raiyat to demand a deduction of rent under section 51.

(*d*)—The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*)—The protection afforded by the Bill to a non-occupancy-raiyat and an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60, and 63).

(*f*)—The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (section 66).

(*g*)—The right of the raiyat to make improvements and claim compensation for them (sections 88, 89, 90, and 93).

(*h*)—The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

tory and every-day experience, and to shut one's eyes to the evidence of patent facts. Such arguments lie badly in the mouths of those who deny—and as the Lieutenant-Governor admits to some extent rightly deny—the raiyat's capacity to deal on even terms with his mahájan. If one point more than another in connection with this Bill is placed beyond the reach of any doubt by accumulated and daily recurring experience, it is this: that the raiyat is not a free agent; that he is constantly compelled, in the most advanced as well as in the most backward districts, to sign away his rights in a manner which, had we not the documents before us, would have been incredible in sane people. In the face of such facts as these, not isolated facts, but general recurring facts, it is unreasonable to maintain that the raiyats are free agents. It is surely out of place to quote Lord Macaulay, as the Commissioner of Rajshahye does, in favour of freedom of contract, when every fact refutes the conditions which Lord Macaulay's argument pre-supposed. As far as freedom of contract can safely be given, the Bill gives it. It, in fact, gives a wide measure of freedom of contract, and the present recommendation of the Lieutenant-Governor would extend that freedom. The checks which the Bill imposes will be found no oppressive bond by fair-dealing zamíndárs. The Lieutenant-Governor doubts if they will feel their existence. Those who most oppose the checks are they who would have no line drawn between liberty and license.

Passing to the provisions of the chapter, I am to observe that Mr. Dampier has brought to notice the fact that landlords occasionally desire to keep in their possession *raiyatí* lands that fall into their hands for special and exceptional purposes, such as a model farm, or a pleasure-ground, or the like. It may not be convenient to them to put their intention at once in force, and meantime it would benefit them and their raiyats that the lands should not lie idle. But if let to a settled raiyat, the latter would acquire an occupancy title in them, while if let to a non-occupancy-raiyat it is conceivable that a court might give him compensation for disturbance. Under such circumstances as these, and for valid reasons established to the Collector's satisfaction, Mr. Dampier would allow the parties to bar the accrual of occupancy rights in such exceptional lands. This proposal the Lieutenant-Governor would accept.

*Chur and dearah lands.*—The Lieutenant-Governor would also, subject to a proviso under section 210, deal with the case of *chur and dearah lands*, which, he ventures to think, are not very satisfactorily dealt with by being left under section 213† practically outside the Bill. Mr. Rivers Thompson does not surrender the view that occasionally *chur and dearah* lands do need exceptional treatment. But the laxity with which the terms *chur and dearah* are applied, sometimes being used in regard to formations of old date, may lead to litigation and dispute, if the subject is not dealt with more clearly than now as an integral part of the Bill. It is specially necessary to keep touch with existing facts as far as possible, and to avoid suggesting the idea that (consistently with the landlord's just rights) the occupancy status with its concomitant attributes may not be acquired in the future, as in the past and present, on accreted lands. The Lieutenant-Governor's proposal would, therefore, be to omit section 213 from the Bill altogether, and to give to raiyats the right of contracting themselves out of the occupancy or settled status in regard to *chur and dearah* lands so long as these do not come within the operations of the dearah survey, or so long as the Collector does not declare them to be fully formed. Thus, a workable rule will be laid down, landlords will be able to make their own terms for new lands, which within a short period of time may pass from a condition of sterility to one of fertility, and nothing will be done to distinguish unnecessarily accreted lands from the older formations.

† Section 213.—Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearah, that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years, and until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

79. *Halhasili tenures.*—The information regarding *halhasili* tenures supplied by the Bhagálpur Conference and by Mr. Reily, Manager of the Chanchal Estate, is full and satisfactory. From it the Lieutenant-Governor infers that the *halhasili* tenure is something like a survival of that land system stated by Mr. H. S. Maine‡ to be, at some period or other of their development, common to all countries inhabited by an Aryan race. It is very evident from the information now furnished that in Bengal these *halhasili* tenures are well advanced in the transition stage to ordinary raiyatí holdings. They are not always distinguishable from occupancy-holdings. Under these circumstances it seems to the Lieutenant-Governor desirable to avoid impeding the transition as much as possible. It is clearly not our object to stereotype the existing state of things. In regard to *halhasili* lands, therefore, the Lieutenant-Governor would let the ordinary provisions of the Bill apply, and would not mention the word *halhasili* at all. The difficulties which present themselves to Mr. Reily as regards the rights in relinquished lands would probably be met by the provisions of sections 95 and 96 of the Bill.

‡ Village Communities in the East and West, page 81.

80. *Úthundi tenures.*—The origin and growth of the *úthundi* system has not been traced by the Presidency Conference. It has, however, been described with adequate fulness in Mr. Cotton's memorandum on tenures submitted to the Select Committee, to which a reference

is requested. It would seem to be of the same class of tenure as that just noticed, only that when the turning point was reached its further development was, so to speak, misdirected, while the *halhasili* tenure developed in the right direction. It is a tenancy from year to year and sometimes from season to season, the rent being regulated not as in the case of *halhasili* by a lump payment in money for the land cultivated but by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenure by crop appraisement of the baoli system; but there is between them this marked difference, that while in the latter the land does not change hands from year to year, in the former, it may. The character and tendency of the *útbundi* system will be best appreciated from the following quotation from the Board of Revenue's Report on Estates under direct management in 1882-83 :—

Útbundi raiyats having no rights take no interest in the improvement of the lands temporarily held by them, and the prevalence of the útbundi system in this (Nuddea) district has resulted in the inferiority of the soil, and the consequent neglected state of such mahâls under khâs management. These raiyats only cultivate a portion of a mahâl, without caring to bring the whole estate under cultivation. The greater portion of a mahâl, therefore, remains uncultivated throughout the year, and is overgrown with weeds and bushes, and at last becomes wholly unfit for cultivation. The intention of the Government in bringing estates under khâs collection, and in extending this system to all Government estates, is frustrated. The estates in this district, in which the útbundi system obtains, have lost much of their importance, and have not derived any of the benefits likely to accrue from khas management.

Mr. Taylor (the Collector) suggests the necessity of converting these tenures into holdings at fixed low rates, observing thus :—

"To bring such estates under cultivation, and to improve the soil, I would suggest that the mahâls may be let out under the system of *jama rates*. The fixity of low rates, lower than those obtained by the *útbundi system*, will no doubt induce cultivators to accept leases on such terms, and encourage them to improve the soil by bringing lands under cultivation, at least with a view to pay the rent assessed upon their holdings. The cultivators will then know that the lands are their own, and that they will not be ejected as tenants-at-will are. Their interest in the land will thus be increased, and it may be expected that they will spare no pains to improve the condition of their holdings.

"In the second place, the fixity of rates, even for a term of years, will contribute to the security of the rental. The whole area of the estates will be assessed at lower rates instead of only a portion at higher, and thereby the gross rental derived therefrom will, I trust, exceed, but never fall short of, the amount under the útbundi system. Then, when the whole mehal has been brought under cultivation and the raiyats have gained much by the settlement at low rates for a length of time, the mehal may be brought under settlement, and the low rates may be conveniently enhanced, and settlement at enhanced rates, which must be fair and equitable, and must be arrived at after consideration of the trouble and money spent by the raiyats to improve their holdings, will be gladly accepted. In this way the útbundi system now in vogue, which has materially affected the condition of the mehals, can, and ought to be, I think, discontinued. In some instances I have lately found that the mehals let out under the útbundi system are not properly looked after. They should be visited while the crops are on the ground, and the area under cultivation should be measured and assessed accordingly. This is, however, not always done in this district. Unless this practice is adhered to and strictly acted up to, there is every likelihood that the collecting agency will be deceived, and will have to be satisfied with whatever rent they can realize. I have impressed upon the sub-divisional officers the necessity and importance of introducing *jumma rates* in mehals in which the útbundi system obtains, but before the introduction of such a system can be given effect to, they have been directed to see that the officers on the Subordinate Executive Service placed under them assess the lands at the due time."

The facts disclosed by this description of the *utbundi* system do not dispose the Lieutenant-Governor to any special legislative measures towards its conservation. It would not be easy, as Mr. Reily of Chanchal, with a good deal of personal experience of the subject explains, to indicate the precise nature of the legislation requisite to meet such cases; though he rightly deprecates the proposal so to exclude these systems from the Bill as they now are excluded by section 214.* It is, Mr. Rivers Thompson understands, a fact that occupancy-rights may now be acquired in *útbundi* lands,† and he thinks that the acquisition of such rights is a thing to be encouraged in the interests of all concerned. The result of this enquiry, then, is to confirm the Lieutenant-Governor in the opinion expressed at the end of the 8th paragraph of my letter of 27th September 1883. He would willingly treat *útbundi* as he recommends that *halhasili* lands should be treated.

* *Section 214*—Nothing in this Act shall affect the conditions, customary or otherwise, under which land is held on in either of the systems known as the "útbundi" system and the "halhasili" system.

† See 20 W. R. 329.

On the remaining provisions of the Bill the Lieutenant-Governor has no remarks to make in this place. It will be remembered that the questions of homesteads, penalties for illegal distraint, rights of pasturage, and the saving of special enactments have already been discussed in other connections.

81. *Summary sale of dependent taluqs and rent-free tenures.*—I am now to turn to your letter of the 5th May, and, as promised in the 6th paragraph of this Report, to offer some observations on the points raised in the second and fourth paragraphs. On the first, fourth, and seventh points raised in paragraph 2, no further observations are here necessary, as they have been sufficiently discussed in paragraphs 68, 60, and 46 of this Report. In regard to the second and third points, *viz.*, the applicability of the summary sale procedure to certain dependent taluqs, and for the recovery of Road Cess arrears from rent-free tenure-holders, the Lieutenant-Governor desires to give a decided answer in the negative. There is no evidence to show that the existing state of things has caused any appreciable difficulty, while it is very likely indeed that the summary procedure would be taken advantage of to the great detriment of the proprietors of old and valuable tenures.

82. *Chittagong tenures. Gazasta and Gora holdings.*—On the fifth point the Lieutenant-Governor's views will have been gathered from what has been said under *útbundi*. He would strike out section 214 altogether. In regard to Chittagong no saving need be made, the proposals made in this letter meeting the requirements of the Division.

Finally, the question regarding the exemption of *gazasta* and *gora* holdings (the latter being of no great prevalence or importance) from the pre-emption clauses of the Bill loses much of its significance if the proposals made by the Lieutenant-Governor in regard to the sales of occupancy-rights be accepted. Occupancy-rights in Bihár will continue, as now, to be saleable wherever such a custom prevails. No question of pre-emption will therefore arise. Elsewhere in Bengal the Lieutenant-Governor would allow the veto on purchases by persons not dependent on agriculture for their chief means of livelihood to operate in case of all transferable holdings not regarded as tenures by statute or by established custom.,

83. *Sufficiency of revenue establishments for the purposes of the Bill.*—In respect to the points raised in your fourth paragraph, I am to observe that undoubtedly the revenue establishments in these provinces would have to be considerably strengthened if raiyats and zamíndárs were at once to have recourse to all those provisions of the Bill which depend on the Collector and his subordinates for their execution. But the Lieutenant-Governor believes that nothing of the sort need be apprehended. In Behar no doubt, where survey and settlement operations will be set on foot very soon after the enactment of the Bill, special establishments will be necessary; but in the rest of these Provinces it may be accepted that the passing of the Bill will create no revolution and but little perceptible change at first. As time goes on, and knowledge of the law extends to the masses, its effects will become apparent; but they will become apparent gradually, and without any disruption of existing relations. The fear that the Bill will "plunge the country into a flood of litigation" is not one that will survive the controversy that gave it birth, for the Bill rather establishes tendencies than introduces change. Therefore it may be assumed, as in other cases, that the knowledge that the law is there will stimulate mutual concession and agreement; there will be no sudden call on the executive.

But, taking things at their worst, the Lieutenant-Governor does not see that, outside Bihár, any excessive strengthening of establishments beyond the Registration establishments would be necessary to cope with the work indicated in the fourth paragraph of your letter under reply. The record of rights, settlement of rents, and registration of khamar land in Behar will no doubt need special establishments, as will the enforcement of the former provisions in isolated estates in Bengal. But these are the only provisions of the Bill that suggest at present any anxiety on the score of the sufficiency of the executive staff. The Lieutenant-Governor cannot believe that it will be necessary to engage in a futile search for a "prevailing rate." Price-lists are now prepared, and all that is required is more care and supervision. Rent deposits are now received, and should go on as usual under the control of the civil courts. Appraisement by special officers will be needed only in a small corner of the Province, and not always there. The registration of landlords' improvements is a thing of the future; permission to measure holdings is granted daily by the civil courts, and should continue to be granted by those authorities. Apart, therefore, from the operations to be undertaken in Bihár and in some isolated estates in Bengal under Chapter X, the only matter of any urgency in connection with an increase of the Executive services lies in the Registration Department. That matter will receive the Lieutenant-Governor's early attention, while the measures connected with operations under Chapter X of the Bill in Bihár will form the subject of a separate communication to be submitted at an early date to the Government of India.

84. *Summary of recommendations.*—Before bringing these observations to an end, the Lieutenant-Governor thinks it may be convenient here to sum up briefly the chief proposals he has made in modification of the Bill in its present form. For the reasons, then, which have been stated at full in the preceding pages, Mr. Rivers Thompson proposes—

I.—To modify the presumption as to fixity of rent by requiring proof of such fixity in all future cases from 20 years before the passing of the Bill.

II.—To abandon the proposal to convert into a tenure-holder a raiyat who sublets more than half his holding. (The Lieutenant-Governor would maintain section 209, which provides that, on the registration of tenures under any law for the time being in force, the summary sale procedure of the Bill for recovery of arrears of rent shall apply to such tenures.)

III.—To recognize the right of free transfer of occupancy holdings among the agricultural population in Bengal Proper; but in Behar to leave matters to be regulated by custom as at present.

IV.—To omit the pre-emption clauses of the Bill, and to substitute for them a system of compulsory registration accompanied by notice of the transfer to the landlord.

V.—To give to landlords in Bengal Proper a veto on transfers if the purchaser be a person who does not derive his chief subsistence and income from agriculture.

VI.—To recognize the principle that, in the absence of reason to the contrary, the courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.

VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced prices exceed the former prices, the other portion going as an allowance for increased cost of production.

VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.

IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position

assigned to it in the present law has led to the construction of collusive and fictitious rates for the purpose of forcing up rents.

X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract between landlord and raiyat in regard to new alluvium.

XI.—To withdraw the arbitrary limitations on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of court up to a maximum limit of 2 annas in the rupee (12½ per cent.) of the former rent, and for a minimum period of 15 years.

XII.—To withdraw all restrictions on freedom of contract in respect of the *initial* rent of all land which may lapse to the landlord from whatever cause.

XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy-raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

XIV.—To give the non-occupancys raiyat a right to claim compensation for disturbance up to one-fourth of a fair rental for each year of the tenancy.

XV.—To withdraw all restrictions on freedom of contract with under-raiyats, subject only to the provision that the under-raiyat's rent shall not exceed the value of five-sixteenths (31½ per cent.) of the gross produce calculated in staple food-grain.

XVI.—To strengthen the customary rights of raiyats in *Bastu* land by providing that rights of occupancy shall accrue under the Bill in all such lands.

XVII.—To make action under the chapter for preparing tables-of-rates dependent on of the application of either party, and not as in the Bill, on the discretion of the Local Government.

XVIII.—To retain the present law of distraint with sharper penalties for abuse of it.

XIX.—To omit the section regarding *uthundi* and *halhasili* lands, to regard both classes as subject to the ordinary incidents of *raiyati* land.

This concludes the observations which Mr. Rivers Thompson has, on this occasion, to offer on what is undoubtedly the most important subject, which has, since the days of the Permanent Settlement, engaged the attention of Her Majesty's Government in India. The Lieutenant-Governor ought, perhaps, to apologize for the length to which his remarks have run; but he was anxious on this the last opportunity which may be afforded him before the final consideration of the Bill, to explain with necessary fulness the motives which actuate him in supporting this measure, and to defend its main principles from the misconceptions to which they have been exposed. It was also his wish to record, with due advertence to the opinions of his officers, and with such argument as the time at his disposal permitted, the reasons on which, in the interests committed to his charge, he bases claims for modifications in some of the provisions of the Bill. He now respectfully confides the question to the Government of India, in the assurance that the result of their counsels will be the enactment of a Tenancy Law in Bengal, which will restore peace where unrest now prevails, and ensure the growth of prosperity and contentment among all classes of the agricultural community throughout these Provinces.

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Circular No. 3T.—R, dated Darjeeling, the 24th May, 1884.

*From*—A. P. MacDonnell, Esq, *Offg. Secy. to the Govt. of Bengal, Revenue Dept.*,

*To*—*All Commissioners of Divisions.*

Your attention has already been invited to the Tenancy Bill as revised by the Select Committee of the Legislative Council of the Governor General; to the Report of the Select Committee upon the Bill, with the dissents from that Report which were published in the *Calcutta Gazette* of the 2nd of April and subsequent dates; and to the important letter of the Government of India, No. 784, dated 5th May, which appeared in the *Gazette of India* of the 10th instant. The Lieutenant-Governor again requests your most careful attention to these documents, especially to the letter of the 5th May, in which His Excellency the Governor General in Council subjects several provisions of the Bill to examination, pointing out, in regard to some, the necessity that exists for a further discussion of their tendency and usefulness, and in regard to others the desirability of collecting more complete information. All those points, as well as other matters to be brought to your notice in the course of this letter, should now, without any loss of time, receive careful consideration from yourself, from the District Officers subordinate to you, and from such public bodies and individuals interested in the measure as may be willing and able to give assistance and advice. It will be found that on a few points local enquiries will be necessary in order to clear away the remnants of those difficulties which, at the outset, beset this question of the amendment of the Rent Law in Bengal. Those points have been generally indicated by the Government of India in their letter, and in the sequel I am to touch upon them also. Before doing so, however, I am to say, with reference to procedure, that when the matters on which further enquiry is needed shall have been duly investigated, and when your District Officers, having taken such advice as may be necessary, or may be tendered by persons interested in the measure, shall have formed their conclusions on the matters referred for their opinion, then it is the Lieutenant-Governor's wish that you should hold a conference of all your Collector's and such other

officers as you may desire to consult, that you should thoroughly discuss the matters referred to you in personal communication with them, and draw up a report embodying the general opininon of the conference. From this intercommunication of ideas, the Lieutenant-Governor anticipates not only much benefit as far as the consideration of the question itself is concerned, but also a great lightening of the work of Government in reviewing the reports to be submitted. Many views, to which officers reporting separately on the Bill might be inclined to attach undue importance, assume their proper position when examined in the light of the larger experience which many men can bring to bear upon the opinions of one. If, indeed, there be marked differences of opinion, the dissentient officers should note briefly their views, but there should be no unnecessary delay in this respect, for it is expected that your report should reach this office certainly not later than the 14th August. The time allowed by the Government of India for this further discussion of the Tenancy Bill is not long, and therefore should be turned to the best account.

2. The procedure which the Lieutenant-Governor has now indicated seems to him to hold out most promise of successful results; and therefore he desires that it may be followed. In any case where a Collector of a district is unable for any reason to attend the conference, he should submit a report, which should be embodied in the General Report of the Conference, as far as the views expressed in it will permit. Mr. Rivers Thompson does not lose sight of the fact that this call comes upon District Officers at a very inconvenient time of the year, when they are busy preparing the Annual Reports, The call, which the Lieutenant-Governor trusts may be the last he will have to make in connection with the Tenancy Bill; must, however, be met; and in order to enable you to meet it, he, as a special exception, postpones the date of the submission of the Annual Reports for one month, if such an extension be necessary in consequence of the orders now issued. It is presumed that in the case of your Collectors, whose reports are due by 1st June, no extension will be needed; but, where needed, you may grant it. Having thus sketched out the plan of enquiry and consultation which seems to the Lieutenant-Governor to offer the greatest promise of satisfactory results within the time at the disposal of the Government, I am now to direct your attention to the principal points which are to form the subject of enquiry and report. In doing this, it will be convenient to follow the order of the revised Bill, reserving for subsequent comment those large administrative questions which the Government of India raise in the initial paragraphs of their letter under notice.

3. *Chapter I.*—On this chapter the Government of India, following the Report of the Select Committee, make no remarks. No points occur to the Lieutenant-Governor to which your attention need be drawn. Should, however, any considerations of importance, which have not been provided for, occur to any in connection with this chapter, you are at liberty to bring them to notice.

4. *Chapter II.*—The provisions of this chapter exercise a very important influence on the character of the Bill, and therefore demand your special attention. It is highly desirable that a forecast should, as far as possible, be made of their probable effect by ascertaining how far similar arrangements already exist in the agrarian economy of the various districts, what the general effect of such arrangements has been, and, where no such arrangements exist, what the general effect of introducing them would probably be. The chief points to which your attention should be directed are (*a*) whether the definition of raiyat in section 5 (3) covers all classes of raiyats, those holding under unregistered lákhirájdárs as well as under the holders of revenue-paying lands; (*b*) whether the presumption in section 5 (5) is, with reference to existing practice, a fair presumption, and, if not fair, what presumption of the sort would be fair; (*c*) whether the conversion of the subletting occupancy-raiyat into a tenure-holder (section 37) is a workable provision, and also likely to secure the objects for which it was devised. In regard to the first and second points, the Lieutenant-Governor deems it unnecessary to do more here than to bring them prominently to your notice; but in regard to the third point (*c*), which may, with advantage, be once for all discussed in this connection, a few further remarks are desirable, because the excision of this provision would naturally exercise an important influence on some other provisions contained in the Bill. In proposing in my letter No. 972 of 27th September (paragraph 7) that an occupancy-raiyat who sublets half his holding should be converted into a tenure-holder, the Lieutenant-Governor had in view the twofold object of discouraging the purchase of occupancy holdings by money-lenders or speculators; and, where transfers were made, of affording a protection from undue enhancement of rents to, and of facilitating the acquisition of the occupancy-right by, actual cultivators of the soil. It is recognized that the formal recognition by the Bill of the transferability of occupancy-rights may tend to the purchase of such rights by money-lenders (whom it is not the wish or object of the Government to benefit at the raiyat's expense), and consequently to the rack-renting of the cultivators holding under such purchasers. From the earliest discussions of the question it has been accepted that if by any definition or legal provision the limitation of the occupancy-right to actual cultivators could be secured, most, if not all, of the objections to the proposal would be removed. But the difficulties in the way of providing any efficient or practical limitation of the sort have hitherto proved insuperable, and it is therefore acknowledged that if the right of free sale as regards the occupancy-tenure is to be maintained, some safeguard must be found against the dangers referred to. Accordingly the plan embodied in section 37 of the revised Bill was devised. The object of that plan was to deter money-lenders from purchasing occupancy-rights by exposing them to being summarily dealt with for arrears of their own rents, while curtailing their power to deal summarily with their under-raiyats. These objects it was proposed to secure by, on the one hand, enabling the superior landlord, in certain

cases, to subject the purchaser of the occupancy-right (who had sub-let half the holding, and thereby rid himself of the responsibility of cultivation) to the summary procedure of the putní sale law, or to some modification of it; and, on the other hand, by raising the actual cultivator or sub-lessee from the position of a *khorfa* to that of a non-occupancy ryot, capable in course of time of acquiring the occupancy right. It was not overlooked that this plan, even if completely successful in practice, would not be a perfect preventive against the evils at which it was aimed; but it was believed that it would have a wholesome effect by bringing from above and from below influences to bear upon the speculative purchaser which would depreciate the value of the occupancy holding in his eyes, and thus deter him from seeking such investment for his money. Furthermore (and this is a very important consideration), the Lieutenant-Governor had looked to the acceptance (by the Select Committee) of the principle of equality between occupancy and non-occupancy rates of rent, and to the adequate enforcement of that principle as a means of preventing the purchaser of an occupancy right, when converted into a tenure-holder, from recovering a higher rate of rent from his under-tenants than he himself paid. The principle, however, of equality between the maximum occupancy and non-occupancy rates finds no place in the revised Bill, and this omission is an important factor as affecting the sufficiency of section 37 for the object it was intended to meet as described above. If on reviewing this subject of the transferability of occupancy rights (and it is essential that you should reconsider it with reference to the question of the "convertible tenure" holder) you are of opinion that the danger of such rights falling largely into the hands of money-lenders is a serious danger, then you are expected to say whether the remedy embodied in section 37 of the Bill is adequate to meet it, or whether the difficulties suggested by the Select Committee in the 5th chapter of their report, and by the Government of India at the end of their 6th paragraph, added to such other objections as may occur to you, raise doubts as to the efficiency of the remedy in question. Should no such doubts suggest themselves to you, you will be good enough to consider and report whether the practical difficulties connected with the ascertainment and registration of subleases, covering in the aggregate half the holding, would be of a character likely to affect the success of the scheme.

5. *Chapter III.*—With this chapter should be read the remarks contained in paragraph 6 of the letter from the Government of India; and especially those which refer to the difficulty of deciding what holdings are and what are not tenures. Further, it will be observed that section 8 provides for the enhancement of a tenure-holder's rent in certain cases up to double the rent previously payable; while section 10 fixes ten years as the period within which enhancements once obtained cannot be repeated. These provisions differ from the analogous provisions concerning occupancy ryots contained in sections 45 to 50 of the Bill, while this chapter omits precautions of the nature provided by section 41 for cases of private agreement. You are required to take these facts into your consideration, and, with reference to the circumstances of the various districts of your division, to report whether in these respects the Bill may be fairly allowed to stand as it is, or whether modifications (and if so, of what character and extent) should be introduced with a view to assimilating, in regard to all classes of agricultural holdings, the periods of immunity from enhancement of rent, and to regulating on an uniform basis the maximum extent of such enhancements.

I am also to add that it is the Lieutenant-Governor's special wish that you should test the practicability or workable character of the provisions in this chapter by applying them to cases of enhancement of tenure-holders' rents, which have already occurred in practice, or might, with reference to the circumstances of the districts in your charge, be reasonably expected to occur. The points (if any) in which the procedure of the chapter appear inapplicable to, or divergent from, what the existing practice is should be carefully noted, weighed, and submitted for the information of Government.

6. *Chapter IV.*—Under this chapter the Government of India, in paragraph 7 of their letter, raise the question of the retention, in its present form, of the 20 years' presumption rule embodied in section 64 (2) of the Bill. As the question has been raised by the Government of India, it is necessary that you should again give it your careful consideration. This presumption is perhaps one of the most valuable provisions which the Bill contains in the interests of the ryots; it is a reasonable presumption, inasmuch as, if it be contrary to the facts, it throws on the landlord no greater burden of proof than in ordinary cases he should be easily able to discharge; it has been, as the Government of India point out, in force for a quarter of a century, and in certain districts, Shahabad for instance, it has very materially altered for the better the condition of the ryots who were able to avail themselves of it. The chief objection urged against it is that on transfers of property, particularly at auction sales, it operates with harshness against the purchaser, who is placed at a disadvantage compared with the former owner, in rebutting the presumption. To this, and to other objections (to be found in the

published correspondence) which have been urged against the fairness of the presumption, you are now requested again to give your attention. You will be good enough to consider, with reference to the circumstances of your districts, and the frequency or fewness of recent enhancements whether landlords really experience any practical or reasonable difficulty in rebutting the presumption if unjustly pleaded, and whether, having regard to the wider interests of the agricultural community, it is desirable that the presumption should be retained in its present shape or modified. The arguments which have been urged against the section as it stands will be found in the dissents recorded by the Hon'ble Mr. Gibbon, the Maharajah of Durbhunga, and Rai Kristodas Pal.

7. *Chapter V.*—In calling your attention to the points raised by the Select Committee in paragraphs 11 and 12 of their Report, I am at the same time to remind you that the definition of the settled ryot is not now open to general discussion. The only questions therefore which arise on this head are—(*a*) should the capacity of the settled ryot to hold, on an occupancy title, land into possession of which he has been let extend over an entire "estate," or should it cover only a portion of the "estate" when the latter extends over a large tract of country, or into more than one district; and (*b*) should the "estate" within which such a right may accrue to the settled ryot be of the extent it was 30 years ago, or at any more recent date. On point (*a*) you will consider whether, with reference to the circumstances of the districts in your charge, any material or practical loss would unavoidably result to zemindars by retaining the definition as it stands; and if you are of opinion that such loss would result, then you are requested to state whether that loss would be obviated without injury to the just rights of the ryots by limiting the portion of the "estates" within which settled ryots taking lands would at once acquire occupancy rights, to the district or even to the subdivision of a district. On point (*b*) you will take into account the frequency of butwaras in recent years, especially in Behar and Eastern Bengal, and the disintegrating influence which such divisions of property would in many cases have on old-established rights if the "estate" of to-day were to be taken as the envelope of the settled ryots' rights. Another minor point which claims attention is the effect of section 29 (1) and the propriety of retaining such a provision in the Bill, which seems somewhat to conflict with section 28. At the same time cases may occur in which the occupancy ryot buys a share in the estate in which his holding is situated, and you are therefore requested to consider whether to such cases a provision similar to section 29 (2) might be made applicable, so as to prevent the merger of the occupancy right in the holding as it existed previous to the purchase. The effect of such a provision would, in fact, assimilate the occupancy holding to khamar land.

8. Coming now to the incidents of the occupancy right, I am to say that the Lieutenant-Governor will be glad again to be favoured with any remarks you may have to make on clauses (*b*), (*f*), and (*g*) of section 31. The other clauses of the section seem open to few, if any, objections, and therefore the Lieutenant-Governor will not press you to discuss them if you have nothing special to urge on the subject. Under clause (*f*) the main question is transferability, on which some remarks have already been made; and, looking to its vast importance, it is expected that you will again discuss it carefully with reference to the facts existing in each district of your division, if comments of a general nature do not suffice to place accurately before Government the information you may have to impart. What the Government particularly desires you to do is to test, in the light of local experience and existing facts, the conclusions which have been provisionally come to on the subject; and to consider what effect on those conclusions may be reasonably expected to result from any modifications in other portions of the Bill (such as the withdrawal, if deemed inefficient or impracticable, of the safegaurds against the intrusion of money lenders) which you may, on full deliberation, deem it advisable to make. The possibility of devising a plan whereby transfers of occupancy-rights by sale (otherwise than in execution of a decree for arrears of rent) could be restricted to the cultivating classes only should be again considered. Hitherto all attempts in this direction have ended in failure more or less pronounced, much of the dfficulty lying in the fact that the mahájan is frequently himself a cultivator. It has indeed been urged by the British Indian Association that it is not desirable to exclude mahájans of this class from purchasing occupancy-rights, and thereby bringing their capital to the promotion of agriculture; and if only some efficient checks could be imposed on the power of such purchasers to rack-rent their under-tenants, the Lieutenant-Governor's apprehensions on the point would be mitigated. There is, however, a large mass of evidence to show that the mahájan who buys up occupancy-rights is one of the most exacting of landlords. If occupancy-rights were to fall largely into the hands of that class, while no protection was afforded to their under-raiyats, the results would be highly undesirable. It may be added that whatever conclusion you adopt on the general question of transferability need not be regarded as in any way affecting the wisdom and desirability of declaring that occupancy

holdings shall be saleable for their own arrears of rent under decrees of Court in substitution for the system of ejectment recognized by the existing law.

9. With reference to the enhancement of rent provisions (sections 39 *et seq.*), it is desirable that your remarks should fall under two heads—(*a*) the grounds of enhancement; (*b*) the extent to which enhancements may be had. While calling your attention on the first point (*a*) to the remarks made on the subject by the Select Committee, and by the Government of India in paragraph 13 of their letter, and while asking you to fully weigh these remarks, I am also to bring the following matter to your special notice. It has been objected to the first ground of enhancement in section 43, namely, the prevailing rate, that while careful enquiry has failed to discover a "prevailing rate" anywhere except in portions of Jessore, the provision in question either has been, or easily admits of being, abused by the production in evidence of collusive or fictitious rates, and thus creating a leverage for forcing up rents. On the other hand, it has been urged that this ground of enhancement is of long standing, and that, although there may not be one uniform rate for any class of land in a village, still the rents generally payable for any particular class do approximate more or less to a certain standard round which they may be regarded as oscillating under the influence of special disturbing causes. You should give a close examination to these considerations, and should state whether such abuses as those to which I have referred have reached any magnitude in your districts, and whether the abolition of the prevailing rate as a ground of enhancement would tell unfairly on zámíndars. Your conclusions on the point should, if possible, be supported by practical instances of the hardships which now may be found to flow from the existence of the rule, or which would probably ensue from its abolition.

10. Then, as to the extent to which enhancement of rent may be had under the Bill as it stands, the changes proposed are of the most material importance. You will observe that the Bill provides for enhancement by suit in Court, and by agreement under a registered contract out of Court. In Court, enhancements to the extent of 50 per cent. on the former rent may be had on the ground of the prevailing rate; to the extent of 25 per cent. on the ground of rise in prices or increase in productiveness due to fluvial action; and to an extent which shall not be "unfair or inequitable" on the ground of improvement effected by the landlord. The ground of natural increase in productiveness owing to indefinite causes has been omitted from the Bill, as general experience has shown it to be wholly unworkable in practice. The rent, if enhanced on any of the above grounds by a decree of Court, is, by the Bill, made unalterable for 15 years. On the other hand, in case of agreements for enhancement made out of Court, if the term be for seven years, not more than two annas in the rupee increase can be taken, while if the term be fixed for 15 years, the rent may be enhanced to the extent of four annas in the rupee, that is to say, to the full amount which can be obtained in Court on the ground of rise in prices, *which is practically the most important ground of enhancement.*

On the broad question of enhancement out of Court, it will not, of course, escape your observation that enhancements by private contract have frequently been obtained out of Court of such a character as to preclude the belief that the raiyats either were free agents or knew what they were doing in agreeing to them. On the other hand, it has been stated that the equalization of the limits of enhancement in and out of Court tends to discourage litigation, and, as an abstract principle, any arrangement which would bring the parties together to settle such questions between themselves, without the intervention of the Courts, would be a great gain. Having due regard to both aspects of the case, an expression of opinion is required whether enhancement should be allowed out of Court, in cases of increased prices or fluvial action, *to the same extent* as in Court, where the landlord's claim in all its bearings would be subjected to the closest examination under a judicial enquiry.

Generally, then, the Lieutenant-Governor hopes that your attention will be specially directed to the limitations on enhancement, and that you will carefully consider whether they are appropriate, or whether a more uniform proportion of increase is not desirable. The absence of a definite limit to enhancement on the ground of landlord's improvements is noteworthy, as is also the absence of any provision for deducting the increased cost of cultivation before an enhancement is decreed on the ground of a rise in prices. These are important questions (the latter especially so) and should be examined with careful scrutiny.

11. It only remains to bring prominently to notice one other point on this subject of enhancement of rent, namely, enhancement on re-letting [section 42 (1)]. You will observe that the provisions of Chapter VI place no limit on the rent which may be demanded from a nonoccupancy raiyat on his first admission to the holding, while the check imposed by section 60 (9) on enhancements demandable after admission seem to be of doubtful efficacy, as it might be held that, when the initial rent is fixed above the prevailing rate, the only limit to a future enhancement of it is the 50 per cent. prescribed by the section. I am later on to call

your attention to the question of non-occupancy rents as a most important portion of the Bill; but in this connection I am to point out to you that, as the Bill now stands, and putting out of sight for the moment the interaction of one class of rents upon the other, the non-occupancy-raiyat's rent may be raised to a much higher figure than the rent of the occupancy-raiyat can. This is, as far as the Lieutenant-Governor knows, a novel principle which it is now for the first time proposed to introduce into the land law of Bengal, and it is requested that you will very carefully consider it in all its bearings. It will also not escape your notice that by section 42 (1) this higher figure, with a still further addition of four annas in the rupee, can be made the initial rent which a settled raiyat may be called on to pay for land which he desires to cultivate. It must be remembered that, through the operation of the pre-emption clauses of the Bill (if they are retained), and through the falling in of tenancies owing to raiyats' deaths or desertions of their holdings, a very considerable quantity of *raiyati* land does yearly fall into the hands of landlords, who, under the provisions of this Bill, may deal with it in the first instance under Chapter VI, and let it to non-occupancy-raiyats at rates above the prevailing occupancy rate. These lands might subsequently be let to settled-raiyats of the estate or village at further enhanced rates, and so become occupancy lands, the enhanced rate payable for which would be available as evidence to raise the hitherto prevailing occupancy rate of the village. Having regard to all these points, the vast importance of the effect on the prevailing occupancy rate of section 42 (1) becomes at once apparent. The question, then, has to be decided whether it is requisite, in the interests of the landlords, just to the great body of occupancy raiyats, or desirable in the general interests of the country, that the scale of occupancy rents should, over and above the grounds of enhancements specified in section 43, be also exposed to the disintegrating and enhancing effect which the provisions of section 42 (1) are calculated to produce. It will be observed that, under the Bill as it stands, there will be classes of occupancy lands at the old prevailing rates; classes of new occupancy lands at rates [framed under sections 42 (1) and 60 (9)] higher than the old prevailing rates; and classes of non-occupancy lands held at rates varying from, but mostly higher than, either of the above rates. The tendency in all these cases will be to level up rents to the highest point—a tendency which will be complicated by the restrictions on enhancement of rents of various classes of raiyats holding these lands. Upon these facts you are requested to say, with reference to the circumstances of your division, whether there is any danger of intricate and costly litigation resulting from such a state of things as the Bill seems calculated to introduce. You will observe from paragraph 12 of their letter that the Government of India have doubts as to the dangerous effect of section 42 on occupancy rates; and that His Excellency the Governor General in Council has expressed a desire for the Lieutenant-Governor's opinion as to whether the anticipated danger is real, and if so, in what way it might best be met. The Lieutenant-Governor has no doubt the danger is real, and that it cannot be met by concentrating attention on the occupancy-raiyats alone. This matter will be dealt with more fully under Chapter VI, relating to non-occupancy raiyats.

12. In this connection also, I am to call your special attention to the question of *bastu* (homestead) lands, or village sites, the terms on which such land are now held, and the extent (if any) to which such terms, if now different, should be assimilated to the conditions which regulate the tenure of ordinary arable land. Section 216 pre-supposes two cases as covering the whole ground occupied by the *bastu* question, (*a*) where bastu is an integral portion of the holding held by the raiyat on no stronger or separate title, and subject to no separate conditions from those which attach to the holding as whole; (*b*) where the *bastu* or site of the raiyat's house is held on a tenure and subject to conditions different from that on which the arable land may be held. It is understood that the *bastu* question is affected by many and various local peculiarities, and the views provisionally accepted in regard to it by the Select Committee may be found incomplete and inaccurate. For instance, having regard to the fact that homestead lands are usually raised above flood-level, and otherwise improved at the raiyat's sole expense, it may be a question whether they should not, in accordance with the spirit of section 43, be exempted from enhancement altogether. It has been brought to the Lieutenant-Governor's notice that excessive enhancement of rates payable for homestead lands is the screw applied for raising rents in those districts where there is still waste lands and a demand for tenants. The affection inherent in the raiyat for his *bari* prevents his leaving an exacting landlord for one more lenient. And this power of the landlord over the raiyat would be more marked if the arable portion of the holding consisted wholly or chiefly of land held on an *utbundi* or *hal hasili* tenure. These considerations will no doubt receive full attention from you; and as the importance of the question, and its relation to the well-being of the raiyat-cannot be overrated, it is hoped you will spare no pains to give, in regard to it, the fullest information and the best advice you can. You are specially requested to state whether, in any of your districts, a custom prevails whereby a raiyat, who is ejected from, or who otherwise parts with, his holding is entitled to retain possession of his homestead lands; and if so, on

what conditions. In districts where butwaras are common, detailed information must be available regarding *bastu*, and from that source, and from information derivable from the Civil Courts, valuable facts may be ascertained. No portion of a butwara Deputy Collector's work is more difficult, or contested by parties, than the apportionment of *bastu* (unless, indeed, it be the apportionment of *khámár* or *sír*), thus showing the importance attached by both landlord and raiyat to the command of the village site. It may be added that the *bastu* question, in the case of non-occupancy-raiyats, is only second in importance to the question as it affects the raiyats with right of occupancy, because the latter are more numerous than the former. This remark seems called for, as from paragraph 2 (4) of the Government of India's letter, it might be inferred (the Lieutenant-Governor does not think it was intended that it should be inferred) that in regard to non-occupancy-raiyats, the *bastu* question was immaterial.

13. Passing on to the provisions for reduction of rent by suit in court, the Lieutenant-Governor desires to ask your attention to the concluding portion of section 51 (*a*). As Mr. Rivers Thompson reads that portion of the section, the deterioration in the land which would justify a reduction in rent must be the result of some incident admitting of precise definition as to time of occurrence and as to manner of operation. You are requested to examine, with reference to the actual facts existing in your division, whether that statement would cover all cases, or whether it may not happen that deterioration of the soil, disabling it from paying a certain sum as rent may not, as in the case of the efflorescence of *reh*, be brought about imperceptibly by causes of which the origin and the action cannot, with any accuracy be predicated. A reference, too, is requested to the remarks contained in the 14th paragraph of the letter of the Government of India, and paragraph 44 of the Select Committe's Report, in regard to the commutation of grain-rents to money-rents (section 53). The Lieutenant-Governor desires only here to invite your attention to the provisions of section 64 (3), and would ask you to consider whether, with regard to the 20 years' presumption of clause (2), a fixed proportion of the crop can be fairly considered, having regard to the rise and fall of price, as the natural and equivalent antecedent of a money-rent invariable over a term of years.

14. As regards price-lists (section 52), the chief matters for your consideration are whether the prices-current for local markets (of which the sub-divisional prices-current are understood to be the averages, just as the district price-current lists are the averages of the sub-divisional lists) have been preserved in the district or sub-divisional record offices for, say, a period of 15 years. If so, I am to enquire whether the correctness of these lists can be verified, and, when necessary, corrected by comparison with the books of grain-dealers in the markets to which the lists refer. If this cannot be done for local markets, can it be done for the markets situated at the head-quarters of sub-divisions? Lists showing the prices prevailing at the district head-quarters alone, or the averages of local prices, do not furnish the information as to prices prevailing at harvest time which the Bill contemplates. If the local price-lists have not been preserved, then it should be stated, after local enquiry (which should be made in the most thorough manner and by the most trustworthy agency at your disposal), whether it is possible to ascertain and construct from the records of grain-merchants, bázár chowdrys, &c., a correct list of the prices of the staple food-crops of your district for the last 15 years. In order to guide your enquiries on this point, I am to attach a statement showing, according to recent information, what food-crops may be considered staples in each district. Should this statement, on examination, seem to you in any way defective, either as to the sort of grain produced, or its relative proportion to other grain-crops grown in the district, you are requested to introduce the necessary corrections into the statement and return it to this office with your report.

15. Turning from the preparation of price-lists to the method of using them for the purpose of enhancement suits, I am to call your attention to section 45 of the Bill, and to the remarks of the Select Committee in paragraphs 33 and 34 of their Report. The Government of India also deals with the subject in the 13th paragraph of its letter. The primary points for consideration are whether enhancements can be fairly allowed in direct proportion to the rise in price, or whether it is not essential that some allowance should be made for the increased cost of production which usually attends general rise in prices, and whether, if you think this should be done, any distinction as to extent of deduction should be drawn between remote districts unconnected by railways, &c., with large markets, and districts enjoying good communications. It would greatly help the Government if the effect of the proposals could be illustrated by examples from actual practice.

It has been suggested that possibly the regulation of rents, with reference to the prices of staple food-grains alone, would tell unfairly against landlords, who might thus be debarred from sharing in the increased profit arising from the cultivation of such crops as jute. The figures, however, representing the course of the jute market at Serajganj for the last 15 years, which are appended to this letter, would seem to show that landlords have nothing to expect in the way of enhancement by including jute in the list of crops to which appeal might be made. It is, however, alleged to be the fact in the eastern districts that jute and rice are often interchangeable crops, being sown in the same sorts of soil. When rice stocks are large it is said that more land is sown with jute; when rice stocks are short, the cultivation of jute is contracted in favour of rice. Thus it would happen that when rice is cheap, jute is dear, and *vice versá*. If such a connection as this were proved to exist between jute and rice cultivation, then, indeed, a stronger case than now exists might possibly be made out for appealing to jute prices as a standard of rent as well as to the prices of rice or of dhan. To this point your attention is requested if jute be a staple in your division. The Lieutenant-Governor is not

aware that such a question arises in case of any other crop. No other non-food crop, not even sugarcane, seems to vary as to area of cultivation with the prices of the staple food-grain; but should such a state of things prevail in your division, you are requested to report on it

16. *Chapter VI.*—Applies exclusively to non-occupancy-raiyats. You will at once observe that its contents differ radically from the provisions of the Bill as introduced into Council, and if the provisions of the first draft told too severely against the landlords, it is open to question now whether the chapter as it stands does not err on the other side. When the Bill was first under consideration last year, Mr. Rivers Thompson objected to different maxima being imposed on the rents of occupancy and non-occupancy-raiyats, and he refers now to the remarks he then made because, although the maxima limits on rents have been withdrawn, the fundamental difference to which he then objected is still retained. In paragraph 20 of the letter of the 27th September, the Lieutenant-Governor wrote as follows.:—

If the one-fifth, or 20 per cent. limit, be justifiable as regards occupancy-raiyats, the question remains—Is five-sixteenths or 31¼ per cent. of the produce fair as regards the non-occupancy-raiyat? On this point I am to suggest, for the consideration of the Council, whether the provisions of section 119 of the Bill, as far as they refer to what is there called the "ordinary" raiyat, do not introduce an unconstitutional and dangerous principle into the law of Bengal. In the statement made by the Hon'ble Mr. Reynolds in his speech in Council, to the effect that it is not, and never has been, the law of Bengal that an occupancy-raiyat should hold at privileged rates, the Lieutenant-Governor concurs; and it therefore becomes a matter for consideration whether, if the one-fifth limit be fair for raiyats with occupancy-rights, five-sixteenths is not unfair for raiyats without them. The origin of the provision as is stands is probably due to Sir Richard Temple's effort to fix occupancy rates with reference to competition rates, by giving the occupancy-raiyat a beneficial deduction on such rates. But the enquiries which were made in connection with that proposal showed that competition rates hardly existed, and that custom not competition, ruled the rents of occupancy and non-occupancy-raiyat alike, unless where considerations of caste intervene. Recent enquiries point to the same conclusion, and it is therefore, in the Lieutenant-Governor's opinion, a matter of doubtul expediency that a novel principle should now be introduced into the law of these Provinces, which, besides, would be calculated to lead to general enhancements of rent, which it is the avowed object of the Government to avoid. It must not be forgotten that if we call into existence two classes of occupancy-raiyats—one holding at higher rates than the other (and this would be the effect of sections 79, 95 and 119 of the Bill combined)—the tendency will be towards an equalization of rates at the higher level. As at present advised, Mr. Rivers Thompson thinks that this a danger which we should not run the risk of incurring, and that if a rack-rent limit is to be preserved in the Bill at all, it should be the same for both occupancy and non-occupancy-raiyats. He has no objection to five-sixteenths of the produce in the case of under-tenants khurfas) who can never acquire occupancy-rights; but he thinks that there is great danger to the cultivating classes in the provision of a separate limit for occupancy and non-occupancy-raiyats. Separate limits are tantamount to a premium on the discouragement of fixity of tenure.

From this passage you will perceive that the equality of occupancy and non-occupancy rates was defended as well on the ground of constitutional principle as of practical expediency. It was proposed that as a substitute for different maxima limits on rent; but in the Bill as now drafted, neither the principle of limiting rents to one-fifth portion of the produce, nor the principle of equality of rates, finds a place. The Government of India (paragraph 15 of their letter) have now expressed a wish to learn the views of the Government of Bengal before coming to a final conclusion in the matter, which cannot be dissociated from the question of occupancy rates referred to in paragraph 11 of this letter.

It is admitted on all hands that the *status* of the non-occupancy-raiyat needs improvement, and in point of fact the question for you to advise upon is whether this chapter effects any improvement in it, or whether, having regard to the substitution of the novel English lease limiting the term of the tenancy, for the customary Indian pattá, which only prescribes its conditions, the chapter does not place the non-occupancy-raiyat in a worse position than he is under the present law. It is true that the initial lease will apply to new tenancies only; but having regard to actual experience, it is to be feared that most, if not all, non-occupancy-raiyats may have to relinquish and re-enter under a lease. Moreover, under the existing law a landlord need not, and it is understood that usually he does not, take any steps to bar the acquisition of the occupancy-right till the tenth or eleventh year of the holding. Under the provisions of the present Bill, short leases will probably become the rule, and ejectment will be sued for at the close of the fifth or sixth year of the raiyat's tenancy if the landlord would neutralize the effect which the concession of the statutory lease under section 60 (7) might have on the raiyat's tenure of the land. It is unnecessary to dwell at any length on the evil effects which such a condition of things would inevitably produce. It is an established fact that, especially in Bihár and in eastern Bengal, landlords do systematically oppose by all means in their power the growth of occupancy-rights. It will be for you now to say, with reference to the facts of your division, whether the provisions of the Bill to which I have now drawn your attention are calculated to intensify or to remove the difficulties which are interposed to prevent the acquisition of the occupancy-right, whose growth it is the policy of Government to facilitate, having due regard to the just interests of the landlords.

17. *Chapter VII.*—The subject of this chapter has already been to some extent discussed, and here the only point in connection with it, to which the Lieutenant-Governor desires to call attention, is the question whether the limitation of under-raiyat's rents would be fair, say to raiyats holding at low fixed rates, or whether such a limitation would be effective in practice. With reference to this question you will, of course, have regard to the provisions of section 37, which, if accepted by you as workable, would no doubt have an important effect in checking rack-renting. If, in your opinion, the limitations in the Bill are likely to prove unfair in certain cases, or impracticable, then you are requested to state whether you consider any limitations at all on under-raiyat's rents desirable, and if so, the lines which such limitations should follow. Your attention is also drawn to section 38 of the Bill, and your opinion on the propriety of the limit thereby imposed on the terms of leases to under-raiyats requested. The

point to be considered is—would such a limitation have any effect in checking the practice of sub-letting.

18. *Chapter VIII.*—As your attention has already been called to the questions of the 20 years' resumption, and the proposal to accept grain-rents as the equivalent antecedent of the commuted money-rent, with reference to that presumption, the Lieutenant-Governor will not again refer to those questions here. Nor does he think that any other provisions of the chapter, except those mentioned in paragraph 17 of the letter of the Government of India, need be brought to your notice with special prominence. The remarks of the Government of India regarding the sufficiency and propriety of the provisions of the chapter on the subject of *baoli* rents in South Bihár should receive special attention from the Collectors of Gayá, Shahábád and Patna, as should the adequacy of the forms of receipt and account in Schedule III of the Bill from all Collectors.

19. *Chapter IX.*—The provisions regarding improvements may not appear at the present moment to be of much practical utility, but there is reason to hope that in the future they will be found valuable. The Lieutenant-Governor, therefore, wishes you to consider whether they are such as are likely to be found generally workable, and he specially requests your opinion whether, without any infringement on the landlord's rights, and with advantage to the raiyat and the general interest of the country, the right of constructing a well is one to which the non-occupancy-raiyat should be declared entitled (see section 90.) The point is perhaps of more importance in Bihar than in Bengal Proper, where well irrigation is not so general or necessary; but in Bihár, and should the Act be subsquently extended to Chutiá Nagpur, in the latter division, the question is one of great and growing importance. In this connection you might conveniently enquire into the question raised in clause (1), paragraph 2 of the letter of the Government of India. In regard to it the opinion of Collectors of Canal Districts and of Irrigation Officers, and of non-officials who use canal water on a large scale, such as the Sarun Indigo planters and Messrs. Mylne and Thomson of Beha, would be valuable.

20. The Government of India call attention, in paragraph 18 of their letter, to section 96, dealing with abandonment of holdings, and the Lieutenant-Governor also requests you to consider, with reference to local facts, whether the section as it stands exposes the occupancy or non-occupancy-raiyat to a material danger of having actual rights no longer capable of invalidation by the landlord, destroyed, or the further growth of inchoate rights suppressed. The question should be considered in connection with the subject of enhancements to which your attention has beeen called in paragraphs 11 and 16 of this letter; for the danger is that these provisions as to abandonment may be abused in order that land may be cleared of old raiyats and enhanced rates imposed on new-comers. If the difficulties pointed out in paragraphs 11 and 16 above can be satisfactorily solved, the solution would have an effect on the abandonment question also by removing the apprehended danger. That a real danger is, however apprehended, there can be no doubt. Authentic information is before the Government of cases in which landlords have expelled raiyats from their holdings without any legal formalities whatever and introduced new raiyats at higher rents. By such an exercise of power the landlord may no doubt become amenable to criminal penalties; but the raiyat, once ejected from his holding, is not always able or willing to seek redress. Should, then, no satisfactory solution regarding the equalization of occupancy and non-occupancy rates present itself to you with reference to paragraphs 11 and 16 above, the question the Lieutenant-Governor would ask you to consider is whether the provisions of section 96 are calculated to promote the exercise of arbitrary power on the part of landlords or not. Should your judgment be in the affirmative, it is hoped you may be able to suggest some means of reconciling the interests of the landlord and the raiyat on the question. It has been suggested that in case of an occupancy holding, which is a valuable right, the interest of the presumed deserter should be sold; but to that suggestion objection has been taken in the landlord's interests. The point, however, is still open to discussion, and Mr. Rivers Thompson will be glad to have an opinion upon it.

21. With regard to the provisions for measurement of lands, you will observe that the landlord's right to measure *all* lands within his estate is affirmed. The present law does not allow him to measure lákhiráj lands, and a report is required whether, assuming that you generally approve of the provisions on this point contained in the present Bill, it is advisable that the measurement of lákhiráj holdings should extend to a survey of internal details, or only of external boundaries. You are also requested to state whether you think any inconvenience is likely to result from the provisions of section 101, declaring that the actual measurement shall be made not by the local, but by the English system of mensuratioon. To this provision it has been objected that parties interested in the measurements would be unable to watch or follow the amín, who would accordingly be freed from the check on his prooceedings, which publicity even now does not always make effective. Therefore suspicion and dissatisfaction would, it is suggested, attend his proceedings even when not open to reproach. The question then is, should the measurement be made according to the officially determined local pole, conversion into English measure being subsequently had, if necessary; or should the process be reversed.

22. With regard to the appointment of managers as the landlords apprehend much difficulty and friction from the provisions contained in section 102 of the Bill, the matter should again receive your careful attention. Their fear is that the manager would too often act detrimentally to the interests of the proprietors, while he would seek to enrich himself at the expense of proprietors and raiyats alike. This aspect of the case is not a new one, but it claims reconsideration with regard to the difficulties which now very frequently arise from shareholder's disputes.

23. *Chapter X.*—To the provisions regarding the record-of-rights and the settlement of rents, the Lieutenant-Governor attaches the highest importance, because it is the first earnest attempt to carry out what has often been contemplated, but never attempted, *viz.*, to record by authoritative enquiry the rights in their holdings of the entire agricultural community in Bengal. The proposal is one of very great magnitude, and its execution must extend over a long period of years, but to its successful accomplishment alone can we look for the great administrative advantages which must ensue in the security of the cultivating classes in their possessions, and the establishment of proper relations generally between landlords and tenants. The Lieutenant-Governor specially requests that with the observations upon them contained in paragraphs 71 to 77 of the Select Committee's Report, and in paragraphs 19 to 21 of the letter of the Government of India, the sections of this chapter may be carefully considered by you and by your Collectors, both with reference to the facts to be recorded, the adequacy of the powers, taken for the purpose of ascertaining and recording them, and the appropriateness of the procedure for the object in view. He also invites your attention to section 116 (2), and begs that you will give your careful opinion as to whether it is desirable that only a presumption should arise in favour of the correctness of facts ascertained with due care in the full light of publicity, and with ample opportunity to the parties interested to contest them; or whether it is to the general interest that the facts, as ascertained (and if not all, then what facts) should be regarded as conclusively established for a certain specified period.

24. *Chapters XI and XII.*—To the points under these chapters, to which the Government of India draw attention in paragraphs 22 and 23 of their letter, the Lieutenant-Governor desires only to add a hope that you will, with reference to the circumstances of your division, carefully consider whether there is in existence any land other than the land defined in section 138 (1), which is commonly recognized as not of a character in which the cultivator can ordinarily acquire the right of occupancy.

25. *Chapter XIII.*—Coming now to the important subject of distraint, you will observe that, in the opinion of the Government of India (an opinion from which the Lieutenant-Governor is not now disposed to dissent), the question lies between the retention of distraint as it exists under the present law (with perhaps sharper penalties in case of abuse) and distraint exercised through the Courts in the way prescribed by the Bill. It is urged by the landlords that the right of distraint, though not always exercised, is essential to the recovery of their rents, especially in the case of non-occupancy-raiyats in border districts or on chur lands; while, on the other hand, it is beyond doubt that the right of distraint (as it now exists) has been greatly abused with the object of enhancing rents, or of recovering legally irrecoverable arrears. It may well be, as experience has in some instances proved, that the abuse of the right of distraint is within the power of the executive to suppress, and the Lieutenant-Governor himself thinks that there is a great deal in the statement that "in the case of an improvident peasantry a remedy against the crop is a more humane process than a remedy against the land." All these and other considerations which your experience must suggest will doubtless be weighed by you, and Mr. Rivers Thompson trusts that, on a subject to which your attention has in all probability been specially directed by recent discussions, you will be able to give practical advice.

26. *Chapters XIV and XV.*—The procedure in suits and in execution laid down in the Bill are subjects on which the Hon'ble Judges of the High Court have been invited to advise the Government of India, and on which the Lieutenant-Governor may find it necessary to consult mafussal judicial officers. Still the views of executive officers are very desirable, particularly on sections 163, 164, 168, 171, 175, 177, 185, and 186, and I am accordingly to request that you will take the chapters, and especially the sections specified, into your consideration, and communicate to the Lieutenant-Governor your opinions regarding them. As the Chutiá Nagpur Landlord and Tenant Act [1 (B. C.) of 1879, section 39] provides for suits against raiyats collectively, and as it is the desire of zamíndárs that a similar provision should be introduced into this Bill, the authorities in that division will again be called upon to report what has been in practice the effect of such a provision in Chutiá Nagpur.

27. *Chapter XVI.*—This chapter reproduces the regulation law for the sale of patní tenures with only such modernization of language and such few improvements in procedure as experience had shown to be necessary. The Lieutenant-Governor is not aware that these provisions are open to any objection, but if you are of a contrary opinion, you are requested to state the grounds of it.

28. With reference to section 209, I am to refer you to paragraph 14, page 17 of my letter, No. 972T.—R. of 27th September, to the Government of India, and to request that, if you have any views as to the direction which legislation on the subject of the registration of tenures should take, whether on the lines of Act VII (B.C.) of 1876 or otherwise, you will be good enough to favour the Lieutenant-Governor with an expression of them.

29. *Chapter XVII.*—The questions raised in this chapter regarding homestead lands have been referred for your consideration in an earlier part of this letter, and need not be again alluded to. The *utbandi* and *hal-hasili* system will be referred to later on, and therefore in this connection all that you need discuss are the provisions regarding *chur* and *deara* lands. I am also to ask that, having carefully examined the provisions of section 210, you will state whether you agree that freedom of contract should be barred in all the cases specified, or whether you think that there are other cases also, not mentioned in the section, to which the prohibition should be extended, or whether you think that, in some of the cases specified (stating which) freedom of contract might be allowed,

30. The remaining chapters of the Bill call for no particular remarks, except as regards section 227, chapter XIX. It is requested that, having assured yourself as to the custom prevalent in each district of your division regarding pasturage, you should state whether, in your opinion, the requirements of the case are sufficiently met by section 227, and if not, what you would propose in order to meet them.

31. The observations which have now been made are intended to draw your attention to the main points of the measure, which are still open to discussion, in the order in which they occur in the Bill. They are not intended as an exhaustive enumeration of the sections on which you are at liberty to comment, but rather as an aid in a work which the Lieutenant-Governor fears you may, amid your many other duties, find onerous, and as supplementary to the remarks of the Government of India and the Select Committee. The questions raised in the initial paragraphs of the Government of India's letter remain to be noticed. Regarding the questions raised in paragraph 4, I am to say that the Lieutenant-Governor will not trouble you, for they are questions which can be adequately discussed by him in communication with the Board of Revenue alone; while to some of the points specified in paragraph 2, namely the acquisition of land for landlords' irrigation channels, the accuracy of price-lists, the possibility of framing a system of enhancement on them, and the legislation necessary in regard to homestead lands, your attention has already been drawn. The points in paragraph 2 of the Government of India's letter which demand consideration are those numbered 2, 3, 5 and 6. In regard to point (2), the first thing to do is to ascertain whether the district records give any information regarding the existence in your division of dependent taluqs of the kind in question. If from your records any such are found to exist, or if, from sources independent of your official records, authentic information as to their existence is furnished, it will then be necessary to consider whether any inconvenience has been experienced by zamíndárs from the present practice; and even then whether, having regard to the small proportion which the revenue fixed at the time of the settlement on such taluqs presumably bears to their present value, it is desirable to subject them to the summary sale procedure provided by the Bill, or to some less drastic measure. It might also be considered whether the objects which the landlords have in view might not, in the case of the larger taluqs at all events, be got over by regarding them henceforward as independent taluqs liable to pay revenue to Government direct.

32. With regard to point (3), observations to some extent of a similar character apply. The tenures in question are so valuable, and the arrears due are usually so small and so well secured, that it will be well to ascertain whether the inducement to abstain from even demanding arrears from such tenure-holders, in order that through default their tenures might come into the market, might not create an evil of greater magnitude than any temporary inconvenience which may now result from the existing state of things. These remarks are offered with the object of suggesting for your consideration certain aspects of the case which strike the Lieutenant Governor as worthy of being examined. Any suggestions you make for mitigating the difficulties complained of by the landlords will meet with Mr. Rivers Thompson's careful attention.

33. In regard to point (5), I am to say that the information before Government as to the precise nature of the *utbundi* and *hal-hasili* system is not as full or precise as could be wished, and accordingly you are requested to give a clear description of the tenures in question, if any such exist in your division, with their incidents, and a statement of the reasons why the ordinary incidents of raiyatí land should not apply to them. Accounts of these tenures are, no doubt, contained in the Statistical Account of Nuddea, and in Administration Reports or official memoranda. References to them are also to be found in various law reports; but, for the purpose in hand, it is desirable that these accounts and reports should now be examined, their defects (if any) supplied, and the result communicated to Government in concise but adequate form. At the same time you are requested to state whether, if tenures known as *utbundi* or *hal-hasili* do not exist, any other tenures, bearing the generally known attributes of such, are to be found, and if so, how you would treat them with reference to the matter in hand. The reference to Chittagong is one which will be considered in communication with the Board of Revenue, as well as in communication with the Commissioner, as the character of land tenures in that division have recently formed the subject of exhaustive discussions between the Board and Government.

34. With reference to point (6), it will have been observed that the pre-emption sections of the Bill apply only to occupancy-rights; but there are in existence, in various portions of Bengal, certain holdings which lie on the border land between clearly defined tenures and cultivating occupancy rights. Such are the *guzasta* holdings in Shahábád, the *goiabundi* holdings in Bhagálpur, the *jotes* of Rungpur, and the *howalas* of the deltaic districts. These holdings have admittedly been transferable by custom for generations, without any right of pre-emption being reserved to the landlord, and it is felt that to subject them now to the landlord's right of pre-emption would depreciate the value of the property to the owner, and possibly lead to inconveniences which it is desirable to avoid. The question then is, can all such semi-tenures, which it is not desirable to subject to the right of pre-emption, be enumerated in the Bill, and thus excluded specifically from the pre-emption clauses, or are such holdings so numerous as to class and so ill-defined that the just interests of their owners can only be protected by such a clause as section 217, which saves custom.

35. In conclusion, I am to express the Lieutenant-Governor's earnest hope that you will make sure of your report reaching this office not later than the 14th August next.

**Circular No. 4T.—R.**

COPY forwarded to the Collector of

By order of the Lieutenant-Governor of Bengal,

H. H. RISLEY,

*Offg. Under-Secretary to the Govt. of Bengal.*

DARJEELING,
*The 24th May, 1884.*

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## LEGISLATIVE DEPARTMENT.

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WE, the undersigned Members of the Select Committee to which the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was referred, have considered the Bill and the papers noted in the schedule annexed, and have now the honour to submit this our further Report.

It must be understood that in referring to the decisions of the Committee we state the view of the majority where there has been any difference of opinion.

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## CHAPTER I.

### PRELIMINARY.

2. We have made some slight amendments in, and additions to, this chapter, but few of them call for notice here.

The definition of "estate" and that of "proprietor," which is dependent on it, have given rise to the erroneous supposition that it was intended to exclude Government tenants from the operation of the Bill. We have now so amended the definitions as to remove any misapprehension on this point.

3. As it seems reasonable that the provisions of the Bill contained in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III should apply to money recoverable under any enactment as if it was rent, we have added to the definition of "rent" a clause providing that "rent" shall in those portions of the Bill include such money.

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## CHAPTER II.

### CLASSES OF TENANTS.

4. The only amendments calling for notice in this chapter are—

*1st*—that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II, as it has been determined to omit section 37 (see *infra*, paragraph 17); and

*2nd*—that we have altered section 5 (*5*) so as to provide that a tenant holding more than 100 bíghás shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding.

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## CHAPTER III.

### TENURE-HOLDERS.

5. We have in section 7 of this chapter included, among the matters to which a Court must have regard in enhancing the rent of a tenure-holder, the questions "whether the tenure was originally granted at a specially low rent for the purpose of reclamation" and "whether any fine or premium was paid on the creation of the tenure."

6. We have omitted section 8 of the Bill No. II, which provided that a Court should not enhance the rent of a tenure to more than double the previous rent.

7. We have in section 9 made the interval which must elapse between successive enhancements of the rent of a tenure the same as in the case of an occupancy-holding, namely, fifteen years.

8. We have omitted the provisions of this chapter specially applicable to patní tenures, and Chapter XVI, relating to summary sale of patní and other tenures for arrears, as we are, on further consideration, reluctant to interfere at present with the existing law regarding patní

tenures, and are of opinion that any extension of the patní sale law to other tenures should be reserved for consideration in connection with the Bengal Registration Bill, to which we shall presently have to refer.

9. We have in sections 12 to 16 of the Bill so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

The Bill in its previous stages provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

10. The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.

When a transfer takes place by sale in execution of a decree (sections 13 and 14), the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that, following the lines of the Bill in its earlier stages, we have not provided for the payment of a fee to the landlord when the sale takes place in execution of a decree for arrears.

In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration.

11. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee and the process fee above referred to, and the Collector will then proceed as above described.

12. In order to compel the person succeeding to comply with the provisions of this section, we have retained, for the case of successions, the provision of section 18 of the Bill No. II, under which a person succeeding will be debarred from recovering his rent by suit, distraint or otherwise, until he has given the notice and paid the fees prescribed.

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## CHAPTER V.

### Occupancy-raiyats.

13. The first alteration in this chapter which appears to call for notice has reference to the area over which the status of settled raiyat is to hold good.

In the 11th paragraph of our first Report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September, 1884, stated that "the majority of the officers consulted disapproved of the definition of 'settled raiyat' as given in the Bill," and that "the proposal which found favour was the elimination of the word 'estate' from the definition."

That Government, nevertheless, was of opinion that it was necessary to retain the word "estate" in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate.

It seemed to us that this danger was not so great as to justify the extension, over all portions of an estate of the status of "settled raiyat" acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a khúdkásht raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view.

14. We have in section 22 re-cast sections 28 and 29 of the Bill No. II so as to carry out more precisely the intention with which they were framed, and we have inserted a sub section (2) providing that if the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder it shall cease to exist.

15. Sections 23 to 26 of the amended Bill take the place of sections 31 to 36 of the Bill No. II; but, except a saving of custom as regards the descent of the occupancy-right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy-right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV), we now propose to leave to custom as under the existing law.

16. The reasons for and against the proposal to make the occupancy-right everywhere transferable by an express legislative enactment have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of the 15th of September last, proposed to leave the law relating to the transferability of the right for the present untouched in Bihár, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill. This decision has enabled us to omit all reference to the question of pre-emption.

17. The 37th section of the Bill No. II, which provided that raiyats sub-letting their land should in certain cases be deemed to be converted into tenure-holders, has met with much adverse criticism, and we now propose to omit it.

The remaining provisions as to sub-letting we have relegated to Chapter IX, where they will be found with certain modifications and additions.

18. In regard to the enhancement of rent in the case of occupancy-rights the Government of Bengal made certain proposals in their letter of 15th September, 1884, which are summarised in the 84th paragraph of that letter as shown on the margin.

VI.—To recognize the principle that, in the absence of reason to the contrary, the Courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.

VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced prices exceed the former prices, the other portion going as an allowance for increased cost of production.

VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.

IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position assigned to it in the present law has led to the construction of collusive and fictitious rates for the purpose of forcing up rents

X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract beeween landlord and raiyat in regard to new alluvium.

XI.—To withdraw the arbitrary limitation on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of Court up to a maximum limit of two annas in the rupee (12½ per cent.) of the former rent, and for a minimum period of 15 years.

XII.—To withdraw all restrictions on freedom of contract in respect of the *initial* rent of all land which may lapse to the landlord from whatever cause.

XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

In regard to VI and VII, we said in paragraph 34 of our Report last year, that in applying the proportion rule in the case of prices the question of making some deduction to cover the effect of increased prices on the cost of cultivation would receive further consideration. The Government of Bengal recommended a deduction of one-half on this account. We recognised the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit we have fixed the deduction at one-third as a general rule.

19. With reference to VIII we did not think we could justify any arbitrary limit in terms of a fractional proportion of the old rent being placed on enhancement when made on the ground of landlords' improvements.

20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent," we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.

21. We were not able to accept the proposal (X) to abandon fluvial action as a ground of enhancement.

22. On the other hand, we have accepted the proposal (XI) to limit enhancements by registered contract (except on the ground of improvement made by the landlord) to two annas in the Rupee (12½ per cent.) carrying with it in all cases a right to hold at the enhanced rent for 15 years, and we have at the same time struck out all the fractional limits placed on enhancement in Court by sections 44 (*a*), 45 (*b*) and 47 (*b*) of the Bill No. II.

23. The restrictions which it was proposed by section 42 to impose in certain cases on the initial rents payable by settled raiyats have, we think, been shown to be impracticable, and we have therefore, as proposed by the Government of Bengal (XI), omitted the section.

24. We were not able to accept the recommendation numbered XIII.

25. The only other amendments in the chapter which appear to call for special notice are as follows :—

(*a*) we have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when owing to the absence of price-lists or any other cause they find it impracticable to take such periods, in which case they may take any shorter periods;

(*b*) we have amended section 39 so that the price-lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provision of the Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence;

(*c*) we have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges.

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## CHAPTER VIII.

### General Provisions as to Rent.

26. We have omitted from the section (50) which enacts the well-known presumption arising from holding at a rent unchanged for 20 years the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it.

27. We have, in section 52, providing for the alteration of rent on the ground of an alteration in the area of the holding, assimilated the provisions of the two clauses (*a*) and (*b*), which provide respectively for increase and reduction; and we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent :—

"In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

"(*a*) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

"(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

"(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

"(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit."

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.

28. We have substituted for the section of the Bill No. II regulating the instalments in which rent is to be payable the following simpler provision, namely :—

"53. Subject to agreement or established usage a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year;"

and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established, we have inserted in Chapter XIII a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months.

29. We have made certain amendments in the division of the chapter relating to receipts and accounts, but the only one calling for special notice is the insertion of a new section (59) requiring the Local Government to provide and keep on sale forms of receipts and accounts. It will be for the landlords to choose whether they will use those forms, but we believe they will be found convenient.

30. In pursuance of the policy of the Bengal Act for the registration of proprietors, we have inserted the following section :—

"60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor.

"But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee."

31. We have likewise modified in some particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt.

32. We have omitted the second sub-section of section 77 of the Bill No. II, which enacted that, when the right, title and interest of a tenant is brought to sale in execution of a decree obtained by a person other than the landlord, the landlord shall be entitled to have his rent paid first out of the sale-proceeds, and we have so re-cast the section as to make it clear that in the case of a tenure-holder, raiyat at fixed rates, or occupancy-raiyat, the landlord's remedy for arrears will be sale and not ejectment, and that the arrears will be a first charge on the tenure or holding.

33. We have substituted for section 79 of the Bill No. II a section (67) providing that an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due.

34. To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such a transfer is duly served on the landlord, the transferor and transferee shall be jointly and severally liable for arrears of rent accruing after the transfer.

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## CHAPTER IX.

### Miscellaneous Provisions as to Landlords and Tenants.

35. We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an improvement within the meaning of the Act, and the raiyat will on being ejected be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine points to the necessity of this.

36. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.

37. We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument the sub-lease shall not be valid against the landlord unless made with his landlord's consent, that a sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy-raiyat could sub-let under section 38 of the Bill No. II), and that where a raiyat has without his landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act.

38. In dealing with surrender and abandonment the only changes made by us which need here be noticed are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided (section 86 (6)) that the surrender of a holding which is subject to a registered incumbrance shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment we have provided (section 87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord or without risking the conversion of these sub-leases into permanent transfers. In the case of sale in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV.

39. We have in section 88 provided that a division of rent shall not be valid as against the landlord without his consent in writing. This we understand to be the existing law.

40. We have amended section 90 so as to make it clear that a landlord is not entitled to enter on and measure land exempt from the payment of revenue.

41. We have in section 92 substituted the acre for the standard bíghá as the official standard of measurement, and have empowered a Court or Revenue-officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard.

## CHAPTER X.

### Record-of-rights and Settlement of Rents.

42. In the Bill No. II the two processes known as the record-of-rights and the settlement of rents were dealt with separately, but it seemed to us more convenient that they should be amalgamated, and we have accordingly given to the Revenue-officer, who is appointed to settle disputes during the operation of recording rights, a similar power to settle disputes regarding rents.

We have, however, provided for two distinct kinds of settlement. Under the ordinary settlement, the officer will only have the power to settle rents when a settlement of land-revenue is being made or a question between the landlord and tenant arises, and such rents as he settles will generally be fixed for a term of years; in other cases his recorded entries will only have a presumptive value; he can, moreover, only reduce rents on the grounds under which reduction is demandable in the Civil Courts. Under the special settlement, which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have power to go to the root of the matter, and to put its settlement on a thoroughly stable footing.

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### Tables-of-Rates.

43. We have decided, in deference to the opinion of many experienced officers and with the consent of the Government of Bengal, to omit the Chapter (XI of Bill No. II) providing for the preparation of Tables-of-Rates. It was evident that the procedure would only be made use of in rare and exceptional cases, and a more effectual method of treating these cases is provided in the Settlement chapter.

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## CHAPTER XI.

### Record of Proprietors' Private Lands.

44. The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the chapter (VI) relating to non-occupancy-raiyats shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for.

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## CHAPTER XII.

### Distraint.

45. We have inserted two sections of some importance at the end of this chapter.

The first (141) provides that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may by order authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The other section (142) added to this chapter empowers the High Court to make rules regulating the procedure under it.

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## CHAPTER XIII.

### Judicial Procedure.

46. Section 147 has already been noticed (*supra* paragraph 28).

47. We have in section 148 added to the sections of the Civil Procedure Code, which are

not to apply to rent-suits, section 326, empowering the Court to authorize the Collector to stay an execution sale of land in certain cases.

48. We have in section 153 excepted from the rules restricting appeals in rent-suits cases in which a question of the amount of rent annually payable by the tenant has been determined.

49. We have omitted section 172 of the Bill No. II, which required all mutual claims between the landlord and tenant as such to be inquired into and determined in every suit and proceeding for ejectment.

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## CHAPTER XIV.

### Sale for Arrears under Decree.

50. We have added to the "protected interests" in section 160—

"(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court or under Chapter X by a Revenue-officer."

The section as it stood would probably have been construed to cover such cases, but we think it well to leave no room for doubt on the point.

51. We have, in order to shorten proceedings, inserted in section (163) a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

52. We have, at the suggestion of our honourable colleague Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold, and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

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## CHAPTER XV.

### Contract and Custom.

53. A question having been raised as to how far section 210 of the Bill No. II, which was intended to have retrospective effect, should be allowed such effect, we have carefully considered each provision of that section, and have come to the conclusion that some of those provisions ought, with reference to this point, to be treated differently from others. The way in which we propose to treat the matter will be best seen from the new section we now propose, which runs as follows:—

Restrictions on exclusion of Act by agreement.

"178. (*1*) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

"(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

"(*b*) shall take away an occupancy-right in existence at the date of the contract, or

"(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

"(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

"(*2*) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880,* and before the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

"(*3*) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

"(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

"(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

"(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

"(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

"(*e*) take away the right of a raiyat to sub-let subject to, and in accordance with, the provisions of this Act;

"(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

* This was the date of the publication by the Government of Bengal of the Rent Commission's Report and Draft Bill

"(g) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

"(h) affect the provisions of section 67 relating to interest payable on arrears of rent."

54. To meet the important case of a lease for the reclamation of waste land to which these provisions are not suitable, we have added the following proviso:—

"Provided as follows:—

"(i) Nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right."

55. We have further provided that the section shall not affect those contracts which are occasionally entered into for the temporary cultivation of orchard land with agricultural crops.

56. We have in section 180 put utbandi lands on the footing on which chur lands were placed by section 213 of the Bill No. II, that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI of the Bill shall not apply to such lands.

57. We agree with the Government of Bengal in thinking that it is not desirable to make any special provision regarding the lands known as *hál-hasili*, and we have accordingly omitted all references to them in this chapter.

58. We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II, be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section (182) on these lines.

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## CHAPTER XVII.

### SUPPLEMENTAL.

59. We have in section 189 added to the powers which may be conferred on officers by the rules to be made by the Local Government—"any power exerciseable by any officer under the Bengal Survey Act, 1875."

60. We have also inserted the following new section, which speaks for itself:—

Tenant not enabled by Act to violate conditions binding on landlord.

"194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

61. Lastly, we have added a section (196) providing that "this Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council." In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

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62. In the 99th paragraph of our former Report we mention certain points on which we desire further information, and on which we solicited the opinions of the Local Government or High Court or both, and to these it is necessary briefly to allude in so far as they have not been disposed of by the foregoing remarks.

63. The first of these points, which was referred to the Local Government, was "whether, with reference especially to landlord's improvements, it is desireable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take."

We are fully sensible of the great importance of this question, but on full consideration we agree with the Government of Bengal in thinking that a discussion of it would be out of place in connection with the present Bill, and that it will be most appropriately treated in connection with the irrigation law, which will probably soon come under revision in Bengal.

64. The only other points specially referred to the Local Government, and to which we have not already adverted, were certain proposals to extend the patní sale procedure. Those proposals did not commend themselves to the Local Government, and now that the patní procedure is to be excluded from the present Bill, they would more properly be reserved for future consideration.

65. The remaining points to which we think it necessary to advert had reference to the question as to the possibility of devising some simplification of the procedure in rent-suits. In paragraph 83 of our former Report we said—" For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction, which would not involve a serious risk of failure of justice" We, however, proposed that certain suggestions which had been made should be referred for the opinion of the High Court. The reply of the Honourable Judges is among the papers before us, and we regret to find that, as we apprehended, they too are unable to strike out any royal road to the result desired. They disapprove of the specific suggestions made, and they state it is their opinion that the true remedy for the evils complained of is to be found in executive rather than in legislative action, that is to say, in an increase in the judicial staff and a reduction of the court-fees.

Since the reply of the Honourable Judges has been received, further proposals have been submitted to us, and in particular a scheme put forward by Bábú Mohiny Mohun Roy, on which the opinions of certain officers have been taken, but we regret to say we have not found among them anything which would materially abridge the procedure without entailing a risk of serious failure of justice. The executive measures referred to by the High Court will, doubtless, receive careful consideration at the hands of the Government.

66. The publication ordered by the Council has been made as follows:—

*In English.*

| *Gazette.* | *Date.* |
|---|---|
| *Gazette of India* ... ... ... ... | 29th March, and 5th and 12th April, 1884. |
| *Calcutta Gazette* ... ... ... ... | 2nd, 9th and 16th April, 1884. |

*In the Vernaculars.*

| *Province.* | *Language.* | *Date.* |
|---|---|---|
| Bengal ... ... ... | Bengalí ... | ... 29th April, 1884. |
| | Hindí ... | ... 6th May, 1884. |
| | Uriya ... | ... 8th May, 1884. |

67. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

S. C. BAYLEY.
RIVERS THOMPSON.*
C. P. ILBERT.
LAKSHMESHWAR SINGH OF DARBHANGA.*(a)
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.*(b)
W. W. HUNTER.
H. J. REYNGLDS.*
PEÁRI MOHAN MUKERJI.*(c)
G. H. P. EVANS.*

*The 12th February, 1885.*

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## SCHEDULE.

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Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 197—1-63, dated 13th March, 1884, and enclosures [Papers No 42].
From Bábú Pronob Náth Ghosál, Náib, Roy Luchmiput Sing Bahadur's Zamíndárí, Kutabpur, District Rungpur, dated 24th April, 1884 [Paper No. 43].
Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 491—9-24R., dated 23rd July, 1884, and enclosures [Papers No. 44].
Office Memorandum by Revenue and Agricultural Department, No. 499R., dated 25th July, 1884 [Papers No. 45].
From Officiating Registrar, High Court, Calcutta, No. 1986, dated 8th August, 1884 [Paper No. 46].
Extract from *The Bengálí* of 30th August, 1884 [Paper No. 47].
From Officiating Registrar, High Court, Calcutta, No. 2611, dated 15th September, 1884, and enclosure [Papers No. 48].

* Signed subject to dissent on certain points.
(a) I sign this Report as it represents the views of the majority, but I reserve to myself the right of recording a separate dissent.
(b) I object to some of the main provisions of the Bill and have recorded a separate dissent.
(c) This Report represents he views of the majority. I object to the main principles of the Bill and record a separate dissent.

From Bábú Kishori Lál Sarkár, dated 21st September, 1884 [Paper No. 49].
From Secretary, British Indian Association, No. 87, dated 23rd September, 1884, and enclosure [Papers No 50].
Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 648—926, dated 23rd September, 1884, and enclosures [Papers No. 51].
Note by Bábú Kishori Lál Sarkár [Paper No. 52].
From Secretary to Government, Bengal, No. 1906T.R., dated 15th September, 1884, and enclosures [Papers No. 53].
From Officiating Under-Secretary to Government, Bengal, No. 2071T.R., dated 29th September, 1884, and enclosures [Papers No. 54].
Memorial of Committee of Orissa People's Association, dated 21st October, 1884 [Paper No. 55].
Memorial of Middle Tenure-holders of the Sub-division of Jhenidah, District Jessore [Paper No. 56].
Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 749—9-35R., dated 31st October, 1884, and enclosures [Papers No. 57].
From Officiating Registrar, High Court, Calcutta, No. 2759, dated 3rd November, 1884, and enclosure [Papers No. 58].
From Officiating Registrar, High Court, Calcutta, No. 2943, dated 20th November, 1884, and enclosure [Papers No. 59].
From Honorary Secretary, Bihár Landholders Association, dated 27th October, 1884 [Paper No. 60].
From Officiating Under-Secretary to Government, Bengal, No. 2201T.R., dated 9th October, 1884, and enclosure [Papers No. 61].
From Bábú Rajkissore Mukerjí, Cultivator-raiyat, Utterpára, dated 24th November, 1884, and enclosure [Papers No. 62].
Notes by the Hon'ble T. M. Gibbon [Papers No. 63].
From Officiating Under-Secretary to Government, Bengal, No. 1926—1009L.R., dated 28th November, 1884, and enclosure [Papers No. 64].
From Bábú Umesh Chundra Ghosh, Senior Pleader, Jessore, dated 24th November, 1884, and enclosure [Papers No. 65].
From Bábú Rajkissore Mukerjí, Utterpára, dated 5th December, 1884, and enclosure [Papers No 66].
From Secretary to Government, Bengal, No. 2002—1038L.R., dated 4th December, 1884, and enclosures [Papers No. 67].
From Officiating Under-Secretary to Government, Bengal, No. 2013—1041L.R., dated 4th December, 1884, and enclosures [Papers No. 68].
From Officiating Under-Secretary to Government, Bengal, No. 1980—1024L.R., dated 3rd December, 1884, and enclosures [Papers No. 69].
From Secretary, Bhágalpur Landholders Association, No. 52, dated 3rd December, 1884, and enclosures [Papers No 70].
From Officiating Under-Secretary to Government, Bengal, No. 2085—1075L.R., dated 10th December, 1884, and enclosures [Papers No. 71.]
From Bábú Bepin Behari Sarkár, dated 1st December, 1884, and enclosure [Papers No 72].
From Officiating Under-Secretary to Government, Bengal, No. 209—1077L.R., dated 10th December, 1884, and enclosures [Papers No 73].
A Review of the Procedure sections of the Bill (No. II], and a few suggestions for the simplification of Procedure, by Bábú Mohiny Mohun Roy [Paper No. 74].
From Secretary, Bihár Landholders Association, dated 13th December, 1884, and enclosures [Papers No. 75].
From Secretary, Central Committee of Landholders of Bengal and Bihár, No. 123, dated 29th December, 1884, and enclosure [Papers No. 76].
Memorial of Khás Mahál Raiyats of Government Estate, Jalamuta, Villages Paikbhera, Harmasah, &c., District Mednípur [Papers No. 77].
From Bábú Sarat Chunder Mukhopadhya, to Private Secretary to His Excellency the Viceroy, dated 27th December, 1884, and enclosure [Papers No. 78]
From Bábú Rajkissore Mukerjí, Utterpára, dated 8th January, 1885, and enclosure [Papers No. 79].
From the Mahárájá of Burdwan, No. L.9—301, dated 7th January, 1885, and enclosure [Papers No. 80].
From Officiating Registrar, High Court, Calcutta, No. 126, dated 14th January, 1885, and enclosure [Papers No. 81].
Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 111, dated 19th January, 1885, and enclosures [Papers No. 82].
Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 113, dated 17th January, 1885, and enclosures [Papers No. 83].
From Bábu Ketaki Bilas Rai, Kirtipur, Jessore, dated 26th January, 1885, and enclosure [Papers No. 84].
Endorsement by Officiating Under-Secretary to Government, Bengal, No. 327-121L.R., dated 31st January, 1885, and enclosures [Papers No. 85].

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*Memorandum of dissent from the decision of the Select Committee on the Bengal Tenancy Bill.*

In signing the Report of the Select Committee on this Bill I wish to place on record my opinion that, having regard to all that has been elicited by the commissions and enquiries of the last six or seven years, the Bill inadequtely meets the necessities of the case which called for legislation. It is unsatisfactory, in so far as it gives insufficient protection to all raiyats against excessive enhancements of rent, and no real protection in other directions to the non-occupancy-raiyat.

I note, *firstly*, that the change under which the limit of the "village" has been substituted for the "village or estate" in section 20 of the Bill may seriously affect the fixity of the "settled raiyat's" tenure. As originally drawn, "estate" formed part of this section, and its adoption as part of the definition had the sanction of the Secretary of State. In that form the definition met with considerable opposition in Committee, but I was prepared to meet objections by accepting an arrangement whereby a permanent cultivator, when willing to pay a fair rent, should carry his *status* as a settled raiyat to any land in that portion of his landlord's estate which might be situated in the pargana or fiscal circle in which the raiyat resided.

*Secondly*, I have opposed the "prevailing rate" as a ground of enhancement. There is ample evidence in the recorded literature on the subject to shew that such a thing as a "prevailing rate" of rent does not exist in any part of the country. Under the law as it stands it is admitted that the zamíndárs have been unable to establish a "prevailing rate" in

their suits for enhancement on this ground; and the consequence was that, failing proof, the endeavour was made to create it fictitiously. The result has been demoralizing and very injurious to the raiyats, and I am afraid that the Select Committee, though animated by the very best intentions, have not provided any positive safeguard against the mischievous tendencies to which I have referred. On the contrary, their proposals on the subject will probably facilitate enhancements up to the *average* of rates prevailing in the village, and will thus place a much stronger power in the hands of the zamíndárs than even the present law permitted or ever contemplated.

*Thirdly*, the Bill as it leaves the Committee almost entirely abandons the non-occupancy and the under-raiyat. They are practically unprotected; and such a result appears to me to be contrary to the intention with which the legislation on the Rent question was undertaken, and contrary to the conclusions of authoritative opinion that, in the case of all tenants of this class, the growth of the right of occupancy, as tending to establish a substantial peasantry, should be encouraged and advanced.

*Lastly*, the loss of the limitation of the maximum rent to one fifth of the gross produce is a serious loss, specially as it affects the non-occupancy and under-raiyats. The proposal to limit rents to a fraction of the gross produce in staple food-crops did not originate with me, though I accepted it and suggested the particular fraction of one-fifth. Indeed, had my views been supported in regard to the abolition of the "prevailing rate" as a general ground of enhancement, and in regard to the protection of the non-occupancy-raiyat, I should not have placed the stress I now do on the gross-produce limit. But as the majority of the Select Committee have rejected, one by one, every effectual check on the rack-renting adopted in the original Bill,—as they have also rejected the equivalents for those checks advocated by me without themselves proposing any substitutes,—it seemed to me that the only hope of escape from the danger of a Bill for the unlimited enhancements of rent lay in a recurrence to the proposal made by the Government of India in their first Bill to limit rents to a share of the gross produce. I am, of course, conscious of the objections to which such a limitation is open as a matter of theory; but theory and practice do not always coincide, and practically a gross produce limit on rents is indigenous in the country, has been asked for by the landlords, and recommended by the ablest among my predecessors. My views on the subject are not shared by a majority of the Committee, and the proposal falls to the ground. I have always admitted that in some Bengal districts the tenantry can well afford to pay higher rents, and I have endeavoured to provide landlords with reasonable facilities for enhancement. But there are many parts of Bengal in which rents are already excessive; and, taking Bengal and Bihár together, I cannot contemplate without anxiety a legislative measure whose tendency is to promote, without an ultimate check, a further increase of those rents.

I had hoped that the legislation now in hand, which has been the subject of discussion and consideration by no less than four Lieutenant-Governors of Bengal, would have carried with it some measure of finality. I gladly recognise in the Bill some advance on the present law as regards security of tenure in the case of raiyats with a right of occupancy. I recognise, too, potentialities for good in the chapter which provides for a survey and a record-of-rights. But fixity of tenure for one class of raiyats loses much of its value as against the power of unlimited enhancements of rent; and in its present outcome there is scarcely the assurance, which had been expected, of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.

RIVERS THOMPSON.

*The 13th February, 1885.*

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*Minute of Dissent.*

The present Rent law has been in operation for the last 25 years. One would have thought that legislation which aimed at an amendment of that law would be directed to such defects and objectionable provisions in it as judicial administration during this long period had brought to prominent notice. But this is far from the actual state of things. Upon one point, indeed, there was a consensus of opinion. The Government and the zamíndárs alike were agreed that the present procedure for the recovery of rent was lamentably defective. So acutely did the Government feel the difficulty that they caused special enactments to be passed by the Local Council for securing for themselves a summary procedure for the recovery and settlement of rent in their own estates, while the zamíndárs were left to follow the procedure which Government in their own case were compelled to abandon. When, again, the obligation of collecting the road and public works cesses was imposed upon the landholders, distinct promises were made to them that they should obtain statutory facilities for the recovery of rent by suit in Court. And when two Bills were introduced for the purpose in the Local Council (and neither of them was carried through) it was observed by the President from his place in the Local Council that "only the procedure sections (those for the more effective realisation of rents) should be proceeded with." So far, therefore, the very facts which point to legislative action clearly show that there was no necessity for a substantive amendment of the Rent Law. There was besides the unwarrantable Proclamation issued by Sir George Campbell in 1872, setting forth that "it is prefectly lawful to unite in a peaceable manner to resist any excessive demands of the zamíndárs; but it is not lawful to unite to use violence and intimidation." For, the Pabná disturbances which occurred about this time, and the significant declaration of the raiyats that they had become the direct tenants of Her Majesty showed not that they were rising in arms against a Government which they meant to condemn as unmindful of their re-

quirements, but that they considered themselves powerful for the assistance they had secured and that they were possessed of the upper hand over their landlords to whom they were liable for arrears of rent. In fact, before the Report and draft Bill of the Rent Commission were published in July 1880, no complaint was made on behalf of the raiyats about the harsh operation of any of the sections of the law, and no suggestion for a revision of its fundamental principles emanated from any judicial officer. On the contrary, Sir Barnes Peacock had expressed as his decided opinion that the occupancy section was operating unjustly against the legitimate interests of the landholders and that it should be abolished. And it would be extraordinary to treat Sir Barnes Peacock's recommendation or the Government promise of a summary procedure for the recovery of rent as evidence of necessity or justification of a Bill like the one before Council which, in our opinion, makes serious inroads upon the ancient rights and privileges of the landholders. The draft Bill of the Rent Commission was based almost wholly upon theory and speculation, and its many innovations have only been shown up but never proved justifiable in the different stages through which it has since passed. In the meetings of the Select Committee on which we had the honour to sit, the authority of the Rent Commission was invoked in support of several of the provisions of the revised Bill; in some cases the opinions of the Bengal Government contained in their letter of the 15th of September last was appealed to; in some the opinions submitted by public officers on the requisition of the Bengal Government were pressed into service; and in others again, it was advanced that it would be unwise to disturb the resolutions passed by the Committee last year. Authority ranging under one or other of these heads was no doubt forthcoming in support of the different sections of the revised Bill, but we do not see how this could be convincing to the Legislature in the absence of evidence duly tested by cross-examination by the members of the Select Committee. The advantages of cross-examination are sufficiently well-known and it would certainly be no disrespect to the most talented person or the best qualified expert if a man of inferior ability sought from his place in the Supreme Legislative Council of the country to satisfy himself by such orderly enquiries as happened to suggest themselves to him. And until such opportunity is offered to the most junior member of the Council, its deliberations must remain very unsatisfactory to itself and to the outside public. The private opinions of even judicial officers, when not confined to experiences of the actual operation of particular sections of the law, do not possess much value, and it would be dangerous to introduce new provisions in a difficult branch of the law on the basis of untested opinions of subordinate officers. When a learned Judge of the High Court reads the Regulations to mean that "no lease was valid till it had been submitted to, and approved by, the Revenue Authorities;" and when another learned Judge of the High Court adduces the passage in Regulation II of 1793, *viz.*, "the property in the soil was never before formally declared to be vested in the landholders" as "conclusive on the point that the soil was not the property of the zamíndárs," we believe no apology is needed for our not placing implicit faith in the extra-judicial opinions of distinguished officers of Government. As regards the condition of the people and the necessity of radical changes in the law, in other words, the policy of the measure, if high officers of State, judicial and executive, may speak with any authority, it is no small accession of strength to those who are opposed to the main principles of the Bill to be able to say that a majority of Divisional Commissioners, and not a few District Judges, share in their views. But these opinions and the opinions of experienced Subordinate Judges on the operation of the different provisions of the present law have in many cases been undervalued by the majority of the Select Committee and consideration shown for the opinions of much less experienced officers upon a perfectly unsupportable estimate of personal weight. We shall have occasion further on to refer to some of these opinions. As regards the general features of the Bill, it appears to us that vested rights of landholders have been interfered with without the sanction either of juridical principles or the formally declared authority of the Executive Council; that rights have been created in favour of one class of subjects and at the uncompensated cost of another class which, to say the least, are of dubious benefit to the country at large, and looking to the large question of growth of population and famine difficulties the changes are simply calculated to augment, rather than relieve, the pressure on Government. The changes proposed to be introduced by the Bill will have the further effect of making, in opposition to well-established principles of Government, the judicial administration subordinate to the Executive authorities in many respects. And lastly, the changes alluded to are sure to bring about such an extent of litigation and uncertainty in dealings out of Court, that we shudder to think of the subject barely as inhabitants of the country and apart from our interests as landholders and from our feelings as the representatives of the landholders of Bengal and Bihár. By a consensus of opinion, official and non-official, the result of the operation of the present law has been to place the whole body of raiyats in a condition of prosperity superior to what they previously enjoyed, and to what is enjoyed by the corresponding classes of people in any, the smallest corner, of this immense continent of British India. There would be no objection to that condition being made still better if it could be done without interfering with the welfare of the other classes. But we strongly believe that far from benefiting the tenantry the measure, in its present shape, if put in operation, will effect their ruin as a class, or in any case of the honester and poorer portion of them, by endless and harassing litigation. The very discussion of the measure upon the lines disclosed in the Bill is fraught with dangerous consequences upon the rural economy of the country and the firm social relations between class and class of the subject community, and between all classes and the Government at the head. We shall now proceed to examine some of the objectionable provisions of the Bill in detail.

Justice Cunningham's Minute, paragraph 16.

Justice O'Kinealy's Minute, paragraph 4.

*Section 5 (5).*—The rule that whenever the area of a holding exceeds one hundred bighás, the raiyat shall be presumed to be a tenure-holder, is arbitrary and opposed to fact. There are many districts in which holdings, each exceeding a hundred bighás, are not uncommon, but the tenants thereof are raiyats all the same. As no written engagements are usually exchanged, landholders will find great difficulty in rebutting the presumption which this clause will raise, while on the other hand the divisions and sub-divisions created by Hindú and Muhammadan rules of succession will ere long present the spectacle of tenures comprising only 20 or 30 bighás of land cultivated by the holders thereof.

*Sections 8 and 36.*—The power given to the Court to direct in the case both of tenure-holders and raiyats, that the enhancement of rent shall be gradual, is novel. As the enhanced rent represents what the landlord is entitled to get, and what the Court considers to be fair and equitable under the circumstances of the case, the provision in question is wholly indefensible. Lord Bramwell truly observed with reference to this provision.—"Now what consideration would influence the Court I do not know; whether if the tenant had got half-a-dozen children it would be a hardship upon him to have his rent suddenly enhanced, I do not know. We do not see how that can be taken into account, indeed, what could be taken into account really under such a clause as that?"

*Sections 9 and 37.*—The change of the minimum period from 10 to 15 years for which an enhanced rent should obtain currency is equally arbitrary. Both in the draft Bill of the Rent Commission and the Bill introduced into the Council the period was 10 years. Although landholders are lawfully entitled to claim enhancement whenever there is a rise in the value of produce and consequent depreciation of the exchange value of money, the limitation of 10 years would be an effectual check to oppressive repetitions of claims for enhancement, but considering the strides the country is daily making in material progress the extension of the period is wholly unwarrantable.

*Section 18.*—The provision to extend to a raiyat holding at a rent or rate of rent fixed in perpetuity the same rights of transfer and succession that belong to a tenure-holder is wrong in principle. The same considerations which have induced the Committee to expunge the sections regarding free sale of occupancy-rights hold good in the case of these raiyats as forcibly as in the case of other occupancy-raiyats. The landholder's objections to a free sale no less than economic considerations in the interests of the raiyats do not lose a particle of their force, whether the raiyat is protected from enhancement or he is liable to pay a fair and equitable rent. The practical operation of the section would, moreover, be productive of the greatest confusion. Every raiyat will claim to hold at a rent or rate of rent fixed in perpetuity, as by so doing he would not only secure to himself a right of free sale, but also protect himself from the conclusion that his rent is liable to enhancement. It would be suicidal on his part to behave himself otherwise than as a raiyat contemplated by this section and thus without any struggle with his landlord to confess himself a raiyat whose rent is liable to enhancement. But what is the Registering Officer, the Court and the Collector to do when a raiyat applies under Chapter III for the registration of a transfer of his holding? Is the Registering Officer or the Collector to enquire and decide in every such case whether the holding is protected from enhancement, or is he to exercise an arbitrary discretion in the matter? Again, is the section to apply to a raiyat who holds at a rent or rate fixed in perpetuity, but whose rent has nevertheless been enhanced by reason of improvements made by his landlord or by reason of his having been found in possession of more land than what he pays rent for? The difficulty would, to a certain extent, be remedied if it were provided that the provisions of Chapter III should be made applicable only to those raiyats whose rents are protected from enhancement by a registered lease or judicially declared title.

*Section 20 (5).*—This sub-section provides that for one year after a man has ceased to hold any land as a raiyat in a village he shall continue to be a settled raiyat in that village. This is wholly anomalous. A man cannot have ceased to be a raiyat and still continue to be a raiyat at one and the same time. The provision contained in section 87 in respect of apparent and not actual abandonment would be a sufficient protection to the raiyat in cases contemplated by this sub-section which involves a contradiction in terms.

*Section 20, sub-section 7.*—The rule of presumption created by this sub-section is a downright perversion of the law of evidence. Nothing is more easy for a raiyat who has held land for 12 years than to prove his possession by the production of his rent-receipts. It is not altogether an easy matter for the landholder to prove the negative. Even supposing that there has been no change of hands in the proprietary title, a landholder would be unable to prove his papers if within 12 years there have been changes, as there frequently are, by deaths, dismissal and otherwise, in his collecting agency. The diffiulty would be unsurmountable in the case of auction-purchasers who would have no means whatever at their disposal for rebutting the presumption.

*Section 21.*—The provision contained in sub-section 1, to the effect that a settled raiyat shall have a right of occupancy in all land for the time being held by him, cannot be supported on any considerations which justify the accrual of a right of occupancy. It is no reason that because a man has a right of occupancy in a certain plot of land that the right should extend by possession for a single day to every plot of land that might be let to him. This is directly opposed to the Despatch of the Secretary of State. It is, moreover, a provision which will act injuriously on the settled raiyats themselves. They will hardly get new lands for cultivation which landholders will take care to let to non-occupancy raiyats and strangers with a view to prevent the accrual of right of occupancy.

*Section 21 (2).*—The effect of the operation of sub-section (2) would be to give a raiyat a right of occupancy in land which he has held "at any time between the 2nd day of March, 1883, and the commencement of this Act," although such land might have passed to the possession of the landholder or another raiyat by abandonment, surrender or transfer at some time within that period. Nothing could be a more fruitful source of litigation.

*Section 22, sub-section 1.*—This sub-section introduces the doctrine of merger in a matter relating to landlord and tenant, not for the purpose of preventing in the spirit of the Ruling reported in 10, Indian Law Reports, Calcutta 45, the acquisition of a right within a superior right, but for the purpose of merging an existing right in the superior right. For reasons explained by Sir Barnes Peacock in a case reported in 10 W. R. 15, this is quite opposed to the system of land-tenures and the condition of the country. The provision is the more objectionable as it saves the right of third parties in the land. The landholder would, therefore, get the land which comes to his possession by purchase, ejectment, abandonment or surrender subject to all the encumbrances created by the out-going tenant. Provisions have been made, it is true, in subsequent sections for defining what would be deemed to be valid encumbrances in different cases, but the language of this sub-section is absolute.

*Section 25.*—As the provision for a free-sale of occupancy-holdings has been abandoned, this section should provide for ejectment for non-payment of rent. A sale of the holding at the instance of the landholder in execution of a decree for rent would, in every case, heap upon the raiyat additional costs which the sale-proceeds might not cover, and would thus entail loss both upon the landholder and the raiyat. Ejectment would be a simple and effective remedy to the landholder, while the raiyat would always be able to prevent it whenever his holding is worth more than the amount of the decree.

*Section 29 (1).*—It might well be taken as an established fact that the price of produce has quadrupled since 1793, and at least doubled within the last 30 years. The productiveness of land has also increased immensely. The restriction which this section imposes upon enhancement by contract to two annas in the rupee is therefore most arbitrary. The rule involves a serious infringement of the rights of landholders. The right which the Government of India, when introducing the Bill, assumed it possessed of determining the rates of rent payable by raiyats to their landlord has, I venture to think, been found to be non-existent. A close examination of it will show it to be wholly unfounded. The question, it is well known, engaged the attention of a Select Committee of the House of Commons in 1832, and the conclusion to which they came after a searching enquiry can hardly be ignored at the present moment. They observed—"unless the Government should either, by public or private purchase acquire the zamíndárí tenure, it would under the existing Regulations be deemed a breach of faith without the consent of the zamíndárs to interfere directly between the zamíndár and the raiyat for the purpose of fixing the amount of land tax demandable from the latter under the settlement of 1792-93." The proposed restriction is, however, altogether uncalled for by the circumstances of the country. No evidence whatever has been adduced to show that the raiyats in any parts of these Provinces are rackrented; all the evidence on the contrary goes to show that landholders have been extremely moderate and forbearing in the matter of settlement of rent with their raiyats. The ratio which rent bore to the value of annual produce at the time of the Permanent Settlement varied according to Sir John Shore from $\frac{1}{2}$ to $\frac{3}{5}$ths, and although the landholders were clearly entitled to get from time to time such enhanced rents as represented the changed value of money according to that ratio, it is an undisputed fact that the ratio which rent bears to the annual value of produce at the present day ranges in different parts of these Provinces from $\frac{1}{20}$th to $\frac{2}{5}$ths. Apart, therefore, from the question of legal rights the restriction in question is a great injustice to the landholders. The effect of the rule on the economic condition of the country would be an unmixed evil. The experience of every country has confirmed Arthur Young's observation that low rents always act as a damper upon industry and ultimately tells seriously upon the condition of agriculture and the prosperity of the cultivating class. The restriction in question will no doubt be felt by the raiyats as a benefit for a few years but ere long the profits of the holdings will give rise to a large class of under-raiyats, increase sub-infeudation to an alarming extent, and thus make a definite area of land feed two, perhaps, three families of raiyats in the place of the one that it is now feeding. In these Provinces where, according to the figures given in Dr. Hunter's Statistical Accounts, more than one-fourth of the average cultivable area is still uncultivated, not one of the least deplorable consequences of such a state of things would be to check the extension of cultivation and the progress of emigration. The question presents another aspect. Would this legislative embargo effectively control the law of demand and supply? Can the legislature force the principles of political economy to bow to its dicta? If a raiyat and his landlord agree between themselves as to the extent to which the rent should be enhanced, ways and means would not be wanting to give their agreement the form of a binding contract. After the terms have been agreed upon the landholder may sue the raiyat for enhancement at a certain figure and the raiyat may confess judgment in Court, or the raiyat may give the zamíndárs as *salami* the capitalized value of the increase in excess of the enhancement allowed by law. The parties may have recourse to other shifts and devices to defeat the law. But perhaps the history of the provision is its strongest condemnation. The draft Bill (section 71) of the Rent Commission provided that there should be no limit to enhancement by contract. That provision was maintained in the draft Bill (section 63) of the Bengal Government, and also in the draft Bill (section 63) which was sent up to the Secretary of State in Council. It was the Bill which was sent up to the Secretary of State in Council. It was the Bill which was introduced in

Council in March, 1883, which for the first time provided (section 59 (2) that the increased rent should not exceed six annas in the rupee. The Select Committee in the course of deliberations last year reduced the limit to four annas in the rupee (section 41). At a meeting of the Select Committee, held on the 8th ultimo, a motion has made on the part of the Bengal Government to reduce the maximum limit to two annas in the rupee, but it was not supported by a single member, and it was therefore not carried. The motion was renewed on a subsequent date in connection with the question of a maximum limit to enhancement by suit in Court and carried by a majority. It should be further observed that the extension of the minimum time from 10 to 15 years during which the enhanced rent should obtain currency, was for the first time made by the Select Committee last year; the draft Bill of the Rent Commission, the draft Bill of the Bengal Government, the draft Bill of the Government of India, and also the Bill which was introduced in Council in 1883, all fixed the minimum period at 10 years. The objections to this limit which we have mentioned with reference to tenures apply with double force in the case of raiyatí holdings.

*Section 29 (2).*—This sub-section contemplates an exercise of powers by the registering officer which is likely to do the raiyat more harm that good. Registering officers are not expected to exercise judicial powers, and yet in the face of his opinion under this sub-section, it would be difficult for a raiyat to prove in the Civil Court that he was not at the time in a sound state of mind, or that he was not competent by reason of his minority or other disability to enter into the contract.

*Section 30 (b).*—The alterations made by this section in the grounds on which a suit for enhancement of rent may be instituted would deprive landholders of enhancement which is justly due, and at the same time introduce unnecessary complications in the law to the injury both of the landholder and of the raiyat. There will be no enhancement on the ground of a rise in price unless the rise is in respect of the price of the staple food-crops. By section 39 (7) the local Government has to determine what shall be deemed to be staple food-crops in these provinces, and it appears from a letter written by the Revenue Secretary to the Government of Bengal to the Secretary of the British Indian Association, dated the 23rd February, 1884, that "the Lieutenant-Governor would probably declare to be staples the two food-grain crops (apparently rice and wheat) which appear * * to be most largely produced in each district." The effect of this alteration would be very harmful. The landholder would get no enhancement for a large rise in the price of jute, sugarcane, or potato, if there has been no rise in the price of rice; while on the other hand a raiyat cutivating simply jute, sugarcane, potatoes or pulses would have to pay not only enhanced rent to his landlord but also to spend more money for his living if the price of rice has risen although the price of these other crops has fallen or remained stationary. It is easy to see that in some cases the operation of this section would be disastrous to the raiyats.

*Section 30 (c & d).*—The alteration made in the ground of enhancement relating to increase of the productive powers of the land is equally objectionable. These clauses provide for enhancement when the increase is due either to improvements effected by the landlord, or by fluvial action; but there are other causes of improvement for which the landlord is undoubtedly entitled to get enhancement of rent. Where, for instance, a change in the course of a river, a new railway, a new public road or a new Government embankment frees land from periodical inundations or from frequent trespasses by cattle or wild animals, any rule which deprives the landlord of his share of the benefit of the improvement militates against the very principle on which enhancement on the ground of improvement of the land in based. The alteration in this ground of enhancement has necessitated the introduction of a number of sections about landlords' improvements, and enquiries into the same and registration thereof which might well have been omitted.

*Section 31 (a).*—There is no justification for the rule contained in this clause to the effect that a landholder, claiming enhancement on the ground that the rent paid by a raiyat is below the prevailing rate should prove the rates of rent paid during a period of not less than 3 years. If the majority of the raiyats of a village have agreed to pay a certain rate of rent and paid that rent by reason of a rise in the price of produce or improvement of the land, why should the landholder have to wait for 3 years before he could sue the remaining dozen or score of raiyats for enhancement of rent at that rate? If these raiyats have any grounds entitling them to continue to hold at a lower rate of rent they may prove such ground as well at the time as 3 years after.

*Section 32 (a).*—Enhancement of rent on the ground of a rise in price of produce would be more visionary than real if, in addition to the other limitations, the restrictions contained in this section are allowed to stand. The Court is required to ascertain the price by comparing the average prices during the 10 years immediately preceding the date of suit. An average of such a long period will necessarily reduce the rate of enhanced rent and deprive the landholder of his proper dues. It would be enough, for the purpose of determining whether a rise in price is merely casual or steady if the average of 3 years is taken. In connection with this matter it is noticeable that section 38, which provides for reduction of rent on the ground of a fall in the price of produce does not contain the rule to which I object. In all fairness, the rule of procedure should be the same in both cases, but from the way in which section 38 is worded, there is nothing to prevent the Court from decreeing reduction of rent on the basis of an average of 2 or 3 years.

*Section 32 (b.)*—The restriction to enhancement contained in this clause is based on a wrong assumption of facts and on false reasoning. The clause provides that, for the purpose of determining the enhanced rent according to the rule of proportion, the average price should be

reduced by ⅓rd of the excess, that fraction representing the increased cost of cultivation. The portion of the Report of the Bengal Government (segment 44), on the basis of which the rule has been introduced, proceeds on wholly erroneous data from beginning to end. Enhancement by the rule of proportion as contained in the first part of this clause involves three different contingencies as regards the costs of cultivation. The costs of cultivation (1) might have increased in the same ratio as the price of produce; (2) they might have increased in a less ratio; (3) they might have increased in a greater ratio. If these costs be taken into consideration the result, by the rule of proportion, would be wholly unaffected in the first case; the landholder would be entitled to get more in the second case in the shape of enhanced rent than he would otherwise get, and it is only in the third case that the raiyat would be entitled to a reduction in the enhanced rent. But where is the evidence to show that the costs of collection have increased in a greater ratio than the price of produce? The statement made by some of the officers to the effect that the costs have increased goes for nothing, as they may have increased in the same or in a less ratio than the price of produce. To illustrate our meaning we shall take a hypothetical case. Let the value of the annual produce of a bígáh of land be Rs. 8, of which Rs. 3 represents the costs of cultivation, Rs. 3 the rent and Rs. 2 the profit of the raiyat, and let the rise, as assumed by the Bengal Government for purposes of illustration, be 25 per cent. in prices, so that the value of the annual produce has become Rs. 10. Then, under the simple rule of proportion, the enhanced rent would be Rs. 3-12, the profit of the raiyat under the rule of proportion would be Rs. 2-8, and the balance Rs. 3-12 would represent the costs of cultivation. The rule of proportion, therefore, assumes that the costs of cultivation have risen in the same proportion as the price of produce—an assumption which in a majority of cases is far more favourable to the raiyat than to the landholder. It is this which induced the learned Judges in Thakurany Dasi's case to hold that the cost of cultivation should not be taken into calculation in working the rule of proportion. The report of the Bengal Government states: "Thus if prices rise 25 per cent., they would increase the rent 12½ per cent., and allow the other 12½ per cent. to go as an allowance for increase in costs of production." It is easy to see that this is both arithmetically and logically erroneous. If 12½ per cent. be allowed for costs of cultivation out of the landholder's share, the actual allowance for such costs would be 37½ per cent.

*Section 33 (a).*—The necessity of registering landlord's improvements created by this section would involve an amount of expensive enquiry which few landholders will care to invite, and the result will, therefore, be to deprive them of enhanced rents to which they are fairly entitled.

*Section 34 (b).*—Where land is washed away or covered with sand, it is the landlord who suffers. A portion of the land on which lay the security for his revenue is gone. The raiyats who held the land would be welcome to cultivate other plots of lands, but the loss to the landholder is irretrievable. As some compensation for such cases, might not they reasonably ask that they should be allowed the whole benefit of improvements in land caused by natural causes?

*Section 38 (b).*—The same rule of procedure as regards the determination of average prices should hold good both in cases of enhancement and reduction of rent. If it be an average of 10 years in the one case, let it be the same also in the other.

*Section 40.*—Few provisions in the Bill will do more harm to the Bihár landholders than the provision contained in this section for the commutation of produce rent into money-rent on the application of the raiyat. The institution of payment in kind is one eminently deserving of every encouragement at the hands of the legislature. A Government settlement-officer has rightly observed: "It gives the landlord a fair profit in any improvement he may make; the rents are self-adjusting; the tenant is not driven into debt to meet a fixed demand; if he borrows, he borrows from his landlord, a less exacting creditor than the village banker; a feeling of mutual interdependence and self-interest is created between landlord and tenant; the former is more than a mere rent-collector, his own prosperity depends on that of the cultivator." If commutation is allowed at the instance of the raiyat, it would entail all the trouble, expense and litigation inseparable from settlements of money-rent, involve raiyats in debt, and seriously affect the cause of agriculture. Lands for which produce rents are paid usually require the co-operation of the landholder for their cultivation. In most places, as in the districts of Patna and Gayá, such co-operation is indispensable. The utter uselessness of attempts on the part of individual raiyats to cultivate such lands without the help of the landholder is nowhere better explained than in the very valuable letter written on the subject by Bábú Bhupsen Sing, Government Pleader of Gayá. He writes: "Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the *ahars* and *pynes*, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly, because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan; thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking, and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, anything but practicable within the bounds of possibility; fourthly, because, assuming, even for the sake of argument, the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each raiyat having paid for the common reservoirs and water-channels would claim

the priority of irrigating his fields, and try to assert his rights or supposed rights, by means fair or foul, which would often lead to serious affrays, resulting in the "breaking of bones and shedding of blood, and sometimes terminating in murders and manslaughters."

*Chapter VI.*—The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat. He may (section 85) sub-let his holding so as to make the sub-lease binding for 9 years, although his own tenure might be for a much shorter time. The landlord will have no power to eject him for refusal to pay enhanced rent. He must serve upon him a notice of enhancement, sue him in Court, and it is only when the raiyat refuses to pay rent at the rates paid by occupancy-raiyats that the landlord may get a decree for ejectment. A non-occupancy-raiyat may (section 79), as a matter of right, dig a well, and erect a dwelling-house and out-offices on his land and make any other improvement after having first served a notice on his landlord requiring him to do so. When a decree for ejectment is passed the Court may extend the time beyond 15 days, the raiyat will be entitled to get from his landlord the price of the crops, if any, on the land or the cost of the preparation of the land, and also (section 82) compensation for improvements made by him. If the landlord applies for a record and settlement of rights, or if the process is forced upon him by the Local Government, the rent of the non-occupancy-raiyat, whether enhanced or reduced, will hold good for 5 years. All these provisions are violent inroads upon well-recognized rights of landholders. It appears to us, however, that the effect of their operation would be to place non-occupancy-raiyats in a much worse position than at present. Having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short term leases with a view to protect his interests and thus reduce non-occupancy-raiyats to mere tenants-at-will. For the purpose of providing for the comparatively small number of cases in which landholders have not or may not protect themselves by contract, a number of sections have been introduced in different parts of the Bill which might well be omitted. They simply add to the radical aspect of the measure without doing any corresponding good.

*Chapter VII.*—I shall discuss the provisions of this chapter along with section 85 which might well have formed a part of this chapter.

*Section 50 (2).*—The operation of the rule of 20 years' presumption has been most injurious to the landholders. Instead of merely giving the raiyat a facility for proving that he and his ancestors before him have been in possession by payment of rent at a uniform rate since 1793, in cases where he has been actually in such possession, it has, like a rule of prescription or of limitation, created rights where none existed before. By the very circumstances of their position the landholders have been unable in most cases to rebut the presumption. Those landholders whose families have been in possession of estates since 1793 form a very insignificant number, the vast majority having acquired their estates by purchase since that time, and as it is notorious that the records of landholders are badly kept, and the climate of the country is inimical to the preservation of old records, it is easy to see that excepting a very few cases landholders have been wholly unable to discharge the burden laid upon them by law. The injustice of this rule of presumption has been exposed by none so well as by the Hon'ble Mr. Reynolds in the report which accompanied his draft Bill. He is supported in this respect by a large number of experienced Revenue-officers, District and Subordinate Judges, who were consulted by the Bengal Government on the subject. Mr. H. L. Dampier, Mr. E. E. Lowis, Mr. G. N. Barlow, Mr. Kean, Mr. D. W. D'Oyly, Mr. R. Porch, Mr. A. Weekes, Mr. C. B. Garrett, Mr. J. Tweedie, Bábú Srinath Rai, Bábú Bhagaban Chandra Chakerbutty, Bábú Naffar Chandra Bhutta, Syed Moazim Hossein and others have recommended either the abolition of this rule of presumption or a material modification of it. Considering that the rule is opposed to the recognised principles of evidence, that it is opposed to the fact that from ½ to ⅔rds of the area of these provinces was waste at the time of the Permanent Settlement, that it has been in operation for the last twenty-five years during which all who really required it and many more have had their titles judicially declared, that it places in the way of auction-purchasers, seeking to get their just dues, obstacles which are practically insurmountable, and that it would operate in future with double hardship upon the landholder, it is but fair to him that the rule should be expunged from the Bill. The justice and necessity of its abolition cannot be better supported than by referring to section 190 of the Bill. When Government with all the means and appliances which a well-kept and organised system of accounts placed at their disposal, find it necessary to protect their own interests by freeing those khás mahále which have never been permanently settled (and these form the majority) from the operation of this rule of presumption, how much more imperative must be the necessity for an amendment of the law in the interests of private landholders?

*Section 50 (3).*—The question as to in what cases the rule of 20 years' presumption, notwithstanding that land has been added to or taken from a holding should apply should be left to the decision of the Courts, according to the merits of each case. A hard-and-fast rule, that the presumption shall apply to all cases of consolidation or reduction of holdings may be fraught with great mischief. The remarks of Sir R. Couch in this connection contained in a ruling reported in 21 W. R. 267 are well worth considering.

*Section 56 (4).*—Considering that section 58 gives the tenant full remedy for refusal or neglect on the part of his landlord to give him a receipt in proper form, this sub-section is wholly unnecessary. It is likely to prove a fruitful source of litigation by holding out to the tenant a prospect of discharge from all liability, if he can shew that his landlord has not put in some one particular in his receipt, although it might have been from ignorance or oversight.

*Section 58.*—A demand of the receipt by a letter under a registered cover should precede the institution of a suit for recovery of penalty. The section, as it is, would offer a great temptation to the tenant to refuse to take the receipt and sue his landlord for recovery of double the amount paid by him.

*Section 61.*—Clauses (*c*) and (*d*) of this section are objectionable. A landholder's agent might have once refused to take rent from a raiyat on the ground of his not being a recorded tenant, or on the ground of some dispute as to the amount of rent, but that is no reason why it should be assumed that he would refuse to take rent at all future time, notwithstanding that the matters in dispute have been settled. There should be a tender of payment in every case before deposit is allowed. Nor should the raiyat be allowed to constitute himself a judge of his landlord's title, and to deposit his rent in Court on the plea that by reason of a suit instituted by a third party, against his landlord, he feels a *bonâ fide* doubt as to his title to receive it.

*Section 64 (1).*—If this sub-section were made applicable only to rents deposited under clause (*d*) of section 61, we should have nothing to say; but we strongly object to it as it clearly refers to all classes of deposit of rent. The Court should certainly have no power to pay money to B, when the raiyat has deposited to the credit of A.

*Sections 74 and 75.*—Exception should have been made in these sections in regard to such impositions "in addition to actual rent" which are allowed by law. Take for instance the case of zamíndárí dawk charge, which is by law (Act VIII of 1862, B.C.) payable by the zamíndár, but which he may (section 9) stipulate with his raiyats for payment by them. Take, again, the case of the road cess. It is payable by law both by the raiyat and his landlord in certain proportions, but there is nothing to prevent the latter to bind the former by contract for the payment of the whole amount by him. (Section 4, Indian Law Reports, Calcutta, 576.) The *salami* which the landholder is clearly entitled to get for parting with a portion of his rights, *e.g.*, allowing the tenant to take earth for brick-making, should also be expressly excepted. This is the more necessary, as the penalty provided in section 74 is very heavy.

*Sections 76—83.*—These sections about improvements and compensation for improvements have been strongly objected to by landholders. If they are allowed to stand, landholders should be given the prior right to make an improvement, where both they and their raiyat wish to make it; the right of non-occupancy-raiyats to make improvements should be taken away, and the difference in this connection between an occupancy-raiyat holding at a fixed rent or fixed rate of rent, and other occupancy-raiyats should be abolished. Section 77 furnishes another instance of the great confusion which will arise, if this distinction is maintained. It is provided in clause (3) that if there is a dispute between the raiyat and his landlord "as to the right to make an improvement," the Collector should "decide the question and his decision shall be final." The Collector must therefore determine finally and conclusively, although quite in an incidental way, whether a raiyat holds at a fixed or enhancible rent.

*Section 85.*—The effect of the various provisions of the Bill regarding sub-letting and under-raiyats would be to give a great impetus to the progress of the institution, although both the Secretary of State in Council and the Government of India have expressed a desire that the institution should be discouraged. A registered sub-lease will be ordinarily binding for nine years, the sub-lessee's rent may not be enhanced beyond a certain percentage over the lessors' rent, in certain cases of sale of the lessors' title the sub-lease cannot be avoided, and even in cases of abandonment by the lessor he will have the right to hold on if he agrees to pay the rent payable by his lessor. These provisions would be more harmful to landholders and their raiyats than a provision of free sale of occupancy-holdings with the restrictions which the revised Bill imposed upon it.

*Section 86 (2).*—The Bill provides for a notice of six months to be given to the raiyat in a case of ejectment. It is fair to the landholder that he should receive a notice of an equal period in a case of surrender.

*Section 86 (3.)*—This clause is objectionable. The notice may fairly be presumed if the landholder lets the surrendered land to another raiyat in the beginning of the year, but to presume it in any other case would be doing him wrong. To presume the service of the notice from the fact that the raiyat has taken a new holding in the name of a relative or friend would be contrary to all rules of evidence, and to raise the presumption from the fact that the raiyat has ceased for three months to live in the village, would be to expect the landholder to act in a way quite opposed to the provisions of section 87. When the question is one of continued liability of the raiyat to pay rent, he will be presumed to have surrendered his holding simply from the fact of his having ceased to live in the village for three months, but when the question is one of the landholder's right to re-let land which has been abandoned, no abandonment will be presumed till the expiry of the year, in which the raiyat so abandons, and not even then till the Collector on the application of the landlord has published a notice in the locality. It is provisions like these which have given the Bill such an one-sided character.

*Section 87.*—The attempt made in this section to formulate the nature of evidence required to prove an abandonment, has singularly failed. A raiyat must (1) abandon his residence; (2) omit to make any arrangement for the payment of rent, and (3) cease to cultivate the land, before he can be said under the section to have abandoned his holding. In the case therefore of a paikhast or non-resident raiyat, there can be possibly no abandonment of a holding, unless the raiyat abandons his native village belonging to a different landholder. The landholder will have no right to let the lands abandoned by a paikhast raiyat to another raiyat until the paikhast raiyat "abandons his residence," a contingency which may never happen. Again

there is no reason why a landholder should have to wait for one year, and lose his year's rent, if he is satisfied that the raiyat has really abandoned his holding. The provision for the publication of notice contained in clause (2) and for the recovery of possession by the raiyat contained in clause (3) would be a sufficient check against any *malâ fides* of the landholder.

It should be also observed that clause (3) extends the time within which a raiyat may sue to recover possession from one year to two years. This extension of time is, under the circumstances of the case, altogether unnecessary, and it will complicate matters, and give rise to litigation. If the land be let in the meantime to a settled raiyat of the village, and if he lets it to another under-raiyat under a registered sub-lease, what an amount of confusion would be caused?

*Section 90.*—This section takes away important rights of landholders as regards measurement. If the raiyat refuses to attend the measurement and point out his land, clause (2) will place him in no worse position than a raiyat who has attended and pointed out his land. In both cases, the measurement will be presumed to be correct unless the contrary is shewn. The most noticeable defect in the section is, however, the absence of any provision for cases in which a landholder, usually an auction-purchaser, is unable to ascertain the raiyats who are in possession of the lands of his estate. A landholder may under such circumstances, it is true, make an application under the Record-of-Rights Chapter, but it would throw upon him not only a deal of expense and trouble but would place him at the mercy of the Revenue-officer.

*Sections 93—100.*—The strong support which the Bengal Government gave in their Report to the provision for the appointment of managers in joint estates was based on an erroneous assumption that it was the existing law. That law was, however, repealed in 1874 when other obsolete enactments were repealed. Since then no necessity has been made out for a provision like this which will place in the hands of a small fractional shareholder of an estate the power of seriously annoying and injuring his co-sharers. Considering that the holders of small estates collect their own rents from the raiyats, the appointment of a manager by Court will eat up all their profits. The facilities which the law and the rulings of the Courts have given for the partition of joint estates have rendered such a provision as this wholly unnecessary.

*Sections 101—114.*—Both among landholders and raiyats this is one of the most unpopular portions of the Bill. These sections give to the Executive Government a power to convulse rural society to an extent far exceeding anything which any differences arising out of the ordinary relations of landlord and tenant can create. Even under circumstances of agrarian disturbances neither of the contending parties would avail themselves of these provisions. The Agrarian Disturbance Act of 1875 remained a dead-letter so long as it was in the Statute Book. The Select Committee have made these provisions much more objectionable than before by introducing a section (section 111) which gives the Revenue-officers power to reduce existing rents either on the grounds allowed by law or on any other ground, and we think that in justice to the landholders and in the interests of the raiyats themselves, these sections should be omitted.

*Section 116.*—A record of proprietor's private lands should be made only on his application, as it would otherwise put the landholder and his raiyats to great expense and trouble at a time when there is perhaps perfect peace and harmony between the parties and when neither of them is prepared for the enquiry. The provision empowering the Local Government to order such an enquiry at any time they please, and without any application on the part of the raiyats or their landlord, is, therefore, highly objectionable. Section 120 involves an anomaly. If a landholder after having cultivated by his own servants a piece of land for 12 years before the passing of the Act, turns it into raiyatí land, he will still be enabled after a lapse of 15 or 20 years, when the record will be made, to claim it as his private land and to get it so recorded.

CHAPTER XII.—The provisions relating to distraint amount virtually to an abolition of the institution. They will give the landholders no greater powers than what the Code of Civil Procedure gives to every plaintiff who may wish to get an attachment before judgment. The landholder looks upon the crops as the security for the recovery of his rent. The sale of the houses and the goods and chattels of raiyats is oftentimes quite inadequate to meet the landholder's claim. In the case of non-resident raiyats the crops raised by them are the landlord's only security for his rent. If they remove the crops before paying the rent the landholder generally loses his rent for the year. The procedure contained in this chapter would therefore result in this, that while the landlord is engaged in making application to the Court and satisfying it of the *bonâ fides* thereof, the raiyat will quietly remove his crops and the former will not only lose his rent but also the costs of the application. It is a misnomer to call that a distraint which is nothing more or less than a process of Court. The present law on the subject does not give the landholder any power which might be possibly abused. He can only attach the crops, but he cannot interfere with the raiyat's doing what he likes with the crops without the assistance of the Court. It is the fear of the consequences if the raiyat removes the distrained crops that constitute the landholder's whole security for the rent. There have been no complaints on the part of judicial officers of any abuse of the power which the present law allows with impunity. On no point, on the contrary, have public officers expressed themselves more forcibly than in condemnation of the procedure contained in the Bill and in support of the existing law. The Presidency Conference, the Patna Conference, the Rajshâhi Conference, the Burdwan Conference, the Orissa Conference and a number of individual officers have recommended the retention of the existing law.

*Section 153 (b).*—The rule allowing an appeal in all cases should not be interfered with. Rent suits should not be judged by the amount of the claim. Very often they possess an importance to which the value of the suit is no index. All those whom we have consulted are of opinion that it is much better that they should have the constitutional right of an appeal than that their suits should be finally decided by special officers selected by the Local Government.

*Section 154.*—The time within which a suit for enhancement may be instituted should be extended to the first 9 months, in order to enable the landholder to judge from the condition of the crops whether he should institute the suit in a particular year. No one would like to institute a suit for enhancement when the prospect of the crops is gloomy, or distress is impending over the country.

*Section 155 (1).*—Provision should be made for service by Court of the notice of ejectment. If it were left to the landholders, as this sub-section does, the service would be denied in most cases and the enquiry would entail unnecessary expense and delay.

*Section 156.*—A decree for ejectment severs the relation between landlord and tenant. If there be crops on the land they go with the land to the landholders, as ruled in a case reported in 5 Indian Law Report, Calcutta, 135. This section lays down a principle and provides for an elaborate enquiry quite in opposition to the judge-made law on the subject. A raiyat may be ejected only at the close of the year when the crops have been reaped. There is, therefore, no necessity for this section. Moreover, when a raiyat's interest may be sold outright four times in the year, a provision regarding crops in cases of ejectment only would give the raiyat an illusory protection.

*Section 160.*—This section introduces serious changes in the present law regarding what are called the protected interests. There could be no objection to a lease for building or manufacturing purposes granted at a fair rent being protected from avoidance on the sale of the superior tenure as provided in the present law, but this section goes much farther. A lease of land whereon manufactories have been erected, perhaps without the consent of the landholder, and reserving a nominal rent is declared a protected interest by this section; as also judicial leases granted to non-occupancy raiyats and permanent leases granted by the out-going tenure-holder. The effect of these provisions will be that it would be in the power of a tenure-holder to create leases in the names of his servants and relations which would absorb the entire profits of the tenure and then put it up to sale by making default in the payment of rent. Most tenures would be rendered quite valueless in no time if these provisions are retained.

*Sections 161—168.*—These sections introduce alterations in the existing law which will prove a fruitful source of litigation. No necessity whatever was felt for provisions like these. If the sale be made in the first instance subject to the registered encumbrances, and then, after the sale proceeds have been found to be inadequate, a second sale be made with power to avoid such encumbrances, it would saddle the judgment-debtor with unnecessary costs, reduce the market value of the tenure and delay the realisation of money due to the landholder. These evils would be greatly enhanced if the procedure be extended by the Local Government to sales of occupancy holdings under section 168.

*Section 177.*—The preamble of Regulation V of 1812 shows that although the Legislature of 1793 enjoined the exchange of written engagements between landholder and tenant, the raiyats of these Provinces in a body deliberately refused to enter into written engagements which would make it obligatory on them to pay as rent, cesses and abwábs which they had been paying as benevolences, and that that Regulation was passed, among other objects, to provide for such refusal. Since that time there has been vast progress in the material properity of the country, in the spread of education, and in the condition of the raiyats. They might well therefore be left to the resources of their own judgment in matters relating to their own interests. They will be perfectly free to contract away their liberties and become emigrants in a strange country, to borrow money at usurious rates of interest involving their ultimate ruin, and to mortgage their holdings or sell them in some cases, and yet this section imposes restrictions upon freedom of contract in a variety of matters in which they are the best judges of their own interests. It is very doubtful how far these would be effective in practice and how far they would prevent parties from having recourse to shifts and devices for the purpose of evading the law. These provisions, it should be observed, offer a striking contrast to the provision contained in section 192. In the case of private landholders, free contract is restricted in the interest of raiyats; in the case of Government no contract entered into by a landholder with his raiyats before the property came into the hands of Government would be respected if it interfered with the right of Government to assess fair and equitable rent upon the land.

*Section 182.*—This Bill should have nothing to do with homestead lands in towns and trading places. Where homestead lands do not form part of a raiyatí holding its incidents should be left to custom and contract.

*Section 184.*—The schedule to which this section refers has extended from one year to two years the time within which a raiyat dispossessed by his landlord may sue to recover possession. We see no reason why this alteration in this existing law should be made.

*Section 186.*—A provision which converts into a criminal offence acts, otherwise not criminal, which relate to the daily transactions of life, is most objectionable. The provisions of the section are, moreover, very one-sided. In the case of the landholder, for instance, an "attempt to distrain" would be a criminal offence, but in the case of the raiyat not only is an attempt to resist distraint or remove distrained crops not criminal, but he may remove crops stored for division or appraisement under the Danabandi system without subjecting himself to any penalty, civil or criminal.

*Sections 191 & 192.*—For reasons stated in different parts of this Dissent, these two sections should be omitted and Government should be placed in exactly the same position regarding landholding rights as private landholders.

*Section 196.*—We do not see either the necessity or the value of this section. If the Acts of the Local Legislature in any way conflict with the provisions of this Bill such Acts would be rendered inoperative by the Indian Councils Act, 1861. If those Acts provide for matters not embraced by this Bill they would have the force of law without any provision like this.

*Schedule I.*—We strongly object to the sections of Regulation VIII of 1793 mentioned in this schedule being omitted. They contain the most important provisions on which the Permanent Settlement was based, next in importance only to the provisions fixing the revenue in perpetuity.

We desire to say, in conclusion, that the Bill does not provide for any summary procedure for the recovery of rent. By making an express provision for decrees directing recovery of rent by instalments, by extending the time before a sale can take place from 20 to 30 days from the date of the proclamation, and by giving the Courts discretion to extend beyond 15 days the time within which a raiyat might protect himself from ejectment by payment of the decreed amount, the Bill has, on the contrary, thrown additional obstacles in the way of recovery of rent.

Considering the importance of the measure and the material changes in the Bill made by the Select Committee since their Preliminary Report was submitted last year, we think that it should be republished before its provisions are taken into consideration by the Council.

PEÁRI MOHAN MUKERJI.
LAKSHMESHWAR SINGH.

*12th February, 1885.*

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I WISH to add that I regret that my unavoidable absence from the Meetings of the Select Committee in the last stage of their labours, and the very short time at my disposal between the receipt by me of the draft report of the majority of the Committee and the date fixed for the submission of the report of the Council, prevents me from recording my opinions at greater length. I adhere to the opinions expressed in my last year's dissent. The measure as a whole is even now opposed to the just rights of the proprietors of land and detrimental to the best interests of the entire community. If not withdrawn, it still requires further and serious consideration by the light of actual ascertained facts and circumstances of the country as opposed to mere opinions and *ex parte* reports.

LAKSHMESHWAR SINGH.

*12th February, 1885.*

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*Memorandum of dissent from the decisions of the Select Committee on the Tenancy Bill.*

ALTHOUGH I think the Bill as it now leaves the hands of the Select Committee an improvement on the Bill submitted to it for amendment, it still contains certain provisions with reference to which I differ with the majority in opinion, and on these points I would beg to record my dissent.

1. I object to the omission of the words "and the whole or part of it is sub-let" from section "5" sub-section "5." The words should be again inserted or the whole of the sub-section omitted.

Under the Bill a tenure-holder is a tenant "who has acquired a right to hold land for the purposes of collecting rents or bringing it under cultivation by establishing raiyats on it." A raiyat is a person "who has acquired land for the purpose of cultivating it himself or by hired labour."

I cannot understand on what ground the majority of the Committee deemed it necessary to over-ride the essential difference in the nature of the two tenancies, and to declare that all persons holding more than 33 standard acres of land shall be presumed to be tenure-holders until the contrary is proved.

To me it appears that the first and only enquiry to be made is whether the tenant cultivates it himself or sub-lets the whole or a portion of it. If he cultivates it himself it should be presumed that he is a raiyat until the contrary is proved. If he sub-lets a portion of it, it should be presumed that he is a tenure-holder, until he proves that he originally acquired the land for cultivating purposes, and that the tenants who hold under him are sub-tenants.

Our efforts in this instance should be confined to strengthening the position of the actual cultivators of the soil.

2. I dissent from the decision of the majority of the Select Committee to omit transferability from among the incidents attached to an occupancy-holding.

I have already exhausted every argument I can think of to induce the Government and the Committee to legalize and control transfer and failed to gain their support, it is unnecessary to recapitulate them here, I will therefore only record my dissent.

3. *Section 18, Chapter 3.*—The provisions of this chapter should be confined to mukarrarí holdings, holdings admitted by the landlord to be held at fixed rents, and holdings the rents of which have been declared fixed in perpetuity under decrees of competent Courts. If this is not allowed, sections 15 to 22 of Bill No. II should be again inserted in the Bill in place of sections 12 (*3*) and 13.

All raiyatí holdings acquired for the purposes of cultivation whether held at a fixed rent or at a rent subject to enhancement, should only be used for the purpose for which they were acquired, *viz.*, for the purposes of cultivation, and for the growth of crops. There can be no sufficient reason for allowing an ordinary cultivator to be ejected from his holding if he uses it in a manner to render it unfit for the purposes of the tenancy and at the same time to allow raiyats at fixed rates of rent to do as they think right with the land even to destroying it whatever the rate of rent may be, whether subject to periodical enhancement or not, the purpose for which the land was originally acquired was the same in both instances and should remain so.

If the provisions of the chapter were confined to admitted rights, the injury to the landlord would be lessened, as they stand in the Bill, in every instance that a landlord sues under section 25 (*a*), the provisions of this chapter will be pleaded to debar suit.

If the above suggestions were adopted, it would not inflict any hardship on the tenant; if the tenant claiming to hold at fix rates, but whose rights had not been admitted wished to avail himself of the privileges allowed him under this chapter, all he need do is to apply under section 157 to have the nature of his tenancy declared previous to availing himself of them.

If the operation of this chapter is not confined to mukarrarí holdings, and holdings the rents of which have been declared fixed by a competent Court, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill, or the landlord will be compelled to bring a suit to set aside every conveyance in which the holding is incorrectly described as a holding at fixed rates, when he receives notice of transfer.

4. The restrictions placed on voluntary enhancement under section 29 will have the effect of compelling the landlord to exact every pice of rent the law will permit him to demand, it prohibits all enhancement out of Court, or it will induce the parties concerned to resort to deception and fraud to evade the papment of the heavy costs entailed upon them in a heavy law suit for enhancement of rents, they will fight it out to the bitter end or lie.

5. Section 35 I consider superfluous. We have throughout the Bill directed the Courts to decree only fair and equitable rents, therefore to tell the Courts that they shall not decree unfair and inequitable rents is unnecessary. With an experienced Judge it will have no weight, but an inexperienced Judge may attach undue importance to it, and in doing so do substantial injustice to one of the parties concerned.

6. Under sections 48 and 49 we have effected too little for the protection of the sub-tenant, the actual cultivator of the soil.

The sub-tenant holding under a registered lease is, I think, amply protected. Short of allowing him to acquire occupancy-rights in the land, the Committee have gone as far as it is possible to go without encroaching on the rights of others, but the sub-tenant who holds under a verbal agreement or an agreement which cannot be accepted as evidence under the law is not sufficiently protected. I would wish to see the sub-tenant receive the same protection against hasty eviction, rack-renting, &c., as is afforded the non-occupancy-raiyat under the Bill.

7. Section 50 is an improvement on section 64 of Bill No. II, but it does not go far enough. I am of opinion that the suggestions made in the Bengal Government letter of September, 1884, that the presumption should run from 20 years previous to the introduction of the suit, should be adopted; my reasons for wishing it so I stated in my dissent on the Bill No. II, therefore need not repeat them here.

8. The penal clauses 59, 74 and 185 require modification as they stand, they will be harsh in their operation and may be used solely for the purpose of giving the landlord annoyance.

9. Section 89—2 prohibiting the landlords measuring lands oftener than once in ten years will have the effect of encouraging encroachments. As the landlords are prohibited from bringing suits for enhancement oftener than once in 15 years there is no necessity for this prohibition, and the right to do so will, in all instances, be useful to them to test encroachments.

10. Section 138 limits the area of the landlords zirát or home cultivation to all land held by him as such for 12 years continuously "previous" to the introduction of the Act, thereby preventing him from acquiring any more land as zirát after the passing of the Bill.

It does not prevent his cultivating more land as home cultivation, but if he once lets it out of his possession, lets it to another person for one season, he will lose his rights in it for ever.

I think the period he is required to hold it for in order to acquire zirát rights in the land should run for a period of 12 years before or after the Act is introduced.

11. Section 173 contains a new provision in law; it permits a judgment-debtor to recover possession of his holding 30 days after it has been sold by decree of Court by paying in the amount of the decree.

I object to it as I think it will have an effect contrary to what is intended.

It will deter would-be purchasers from bidding, thereby allowing holdings to be sold for one quarter their value.

It will encourage hangers-on about the Courts to make speculative purchases.

And last, not least, it will induce the judgment-debtors to be careless in the due payment of their debts.

T. M. GIBBON.

*12th February, 1885.*

*Dissent.*

I REGRET I cannot concur with many of the decisions arrived at by the majority of the Select Committee. It seems to me that we have failed to achieve some of the principal objects of the Bill, and that the modifications which the measure has undergone, whilst securing to the landlords substantial advantages, have left the raiyats as defenceless as before.

The Bill was introduced in Council with certain well-defined objects which were of a two-fold character, namely (1) to give reasonable security to the peasant in the occupation and enjoyment of his land; (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent. In order to attain the first object, it was proposed to make the following changes in the existing system:—

(1) to extend to permanent cultivators, holding land in a particular village or estate, the right to hold that land on payment of a fair rent;
(2) to make occupancy-rights transferable;
(3) to introduce a fixed minimum limit for the enhancement of rents; and
(4) to provide some efficient guarantee to non-occupancy-raiyats against *arbitrary* eviction and *arbitrary* enhancement of rents. As regards the first object, the proposal, no doubt, has been maintained with some modification. But this has certainly not been the case with the others, and I must confess to a feeling of disappointment at the withdrawal of most of those provisions which were from time to time introduced to secure these objects.

The free transfer of occupancy-holdings was, if I may so call it, the keystone of the measure. The custom had grown up in various parts of Bengal and was gradually extending itself to the entire province. Excepting those places where the presence of a foreign element predominated and caused some degree of friction between landlords and raiyats, the tenants who enjoyed the right of free transfer were admittedly more prosperous and better able to withstand the periodical shocks of scarcities and famines. It was admitted that, during the years immediately preceding the introduction of the measure in Council, the evidence in favour of the extension of the right of transferability had accumulated considerably. It was accordingly proposed to give a statutory sanction to that right. With reference to Bihár, however, a doubt was entertained by the Government of Bengal, and my own knowledge of the circumstances of that province induced me last session to bring forward a proposal to withdraw Bihár from the operation of the provision. That proposal, however, was not approved of, and it was resolved to give the right to all occupancy-raiyats throughout Bengal and Bihár. During the present session, the provision has been dropped entirely from the Bill. Whilst agreeing to the advisability of leaving to custom the right of free transfer in Bihár, I consider that as regards Bengal it would have a mischievous tendency. In every place, even where the right has been freely exercised, such as the Presidency, Rajsháhi, Dháká and Chittagong Divisions, the customs will be disputed, with the results that a large portion of the consideration money will pass either into the hands of the landlords or their servants. It would have been far better to recognize transferability throughout Bengal Proper, subject, if necessary, to the payment by the raiyat of a graduated scale of fees upon the consideration money, than to have left it to custom, which I fear will henceforth be disputed in every instance, to the serious prejudice of the tenant in the exercise of his right. With the safeguards which the Bengal Government proposed to attach to the recognition of the right in Bengal Proper, no injury to the landholding interests need have been feared. I think the mode in which the question has been discussed and decided is likely to produce mischief. Had the question not been raised, this mischief might have been avoided.

2. From the very inception of the Bill, it was considered necessary to introduce a maximum limit on rents. In many parts of the province it was proved by the stern testimony of facts that the enhancement of rent beyond a certain limit implied starvation to the cultivators of the soil, and that any endeavour to exact rent beyond that limit ended in failure to the landlord or distress to the tenant. In the interests of the landholding classes themselves, it was proposed to provide a check to the system of rack-renting which many of them were disposed to adopt. The East Landholders Association and the late Bábú Kristodás Pál both proposed a gross-produce limit—the former one-fifth as the highest limit of enhancement which the zamíndárs thought proper to demand, the latter one-fourth. The important question to determine was what proportion should the raiyat be left in enjoyment of after payment of his rent? If experience and the collective evidence of competent observers are of any account, it is clear that the raiyats in Bengal can hardly pay for rent more than one-fifth of the gross produce without trenching upon the bare means of subsistence. If in some places the *jamabandís* shew a higher rent, the question remains is the raiyat ever able to discharge his liability? Among other evidence, that recently supplied by the Board of Revenue as the results of its experience of wards' estates furnishes a negative answer to this question. It certainly cannot be the interest of anybody to leave the raiyat a bare subsistence. Whatever the proportion it may have been considered desirable to adopt, a gross-produce limit appeared to me the most satisfactory and most feasible of all the proposals brought forward to prevent rack-renting. The adoption of this limit would have also enabled the legislature to give some degree of protection to the large body of non-occupancy and under-raiyats who are now practically left without any protection. The withdrawal of the fractional limit upon enhancements in Court is in my opinion likely to prove injurious to the raiyats.

3. I consider the ground of enhancement on the basis of "prevailing rates" as open to serious objection. It introduces, in the form it has now assumed in the Bill, an entirely novel principle into the law of Bengal. The law has hitherto not recognized enhancements up to the *average* of rates payable, and it seems to me that the recognition of such a principle is not only dangerous, but, without any correlative ground of reduction, unjust. It will end in screwing up rents to the factitious average of a large number of rates, over the correctness or reality of which no individual raiyat has any control, and that average will furnish the basis for a fresh increase until the highest possible rate is reached.

4. Enhancement on the ground of increase in the price of staple food-crops is to my mind economically indefeasible. When the price of food-crops increases, the price of other necessary articles also increases. Is it fair or reasonable to constitute a rise in the price of staple food-crop as a ground of enhancement when a hundred other circumstances, like the increasing cost of production, increasing cost of the bare necessities of life, &c., tend to show that the raiyat of to-day in the majority of instances is not a whit better off than the raiyat of twenty years ago? Let us take for example an instance (which is not uncommon in Bengal) of a raiyat whose holding is fit for growing, say cotton, and whose cultivation, owing to a fall in the cotton-market, has diminished in value. As the Bill stands such a raiyat would, notwithstanding his contracted ability to pay enhanced rent, be still liable to enhancement should the price of food-grains have risen. In other words, although he gets less for his crop and has to pay more for his food, he is still liable to have his rents increased. I cannot help thinking that the Select Committee have failed to realize the full effects of this ground of enhancement, and I would strongly urge that the old ground of enhancement on the basis of net values should be reverted to.

5. The Bill provides no efficient safeguard against the ejectment of a non-occupancy-raiyat to prevent the possibility of his acquiring an occupancy-right.

6. I am not able to understand the object of the factitious difference which has been created between under-raiyats holding under registered sub-leases, and under-raiyats holding verbally or under an unregistered lease. The system of sub-letting is interwoven with the agricultural economy of the country, and the Committee at a very early stage recognized the inexpediency of introducing any provision in the Bill interfering with it. Considerable protection has been given to planters and capitalists taking lands for purposes of indigo cultivation from the raiyats under registered sub-leases. No protection, however, is given to the mass of under-raiyats. It is said that these may secure to themselves the same rights by simply taking registered leases; but it must be remembered that the majority of the under-raiyats are poor to the verge of starvation, and that they are not in a position to demand registered leases.

7. I demur, also, to the provision embodied in the Bill regarding *útbandi* tenures. This provision seems to me to be in direct contradiction to the views of the Secretary of State and the Government of India, that "shifting" should be put an end to. The *útbandi* provisions recognize and legalize the eviction of a raiyat at the mere caprice of the landlord. I had no objection to the proposals of the Bengal Government to allow land held on the *útbandi* system to be a matter for contract; but I have strong objections to the *útbandi* raiyat being left, as this Bill leaves him, without any practical protection whatsoever.

These are the main and essential points on which I differ from my colleagues; but there are various minor details with reference to which, also, I cannot agree with them.

8. On the whole I regret to think that a measure from which so much was expected should prove so inadequate in its general result. The guarantees to which the raiyats had laid claim, as well on constitutional grounds as on those of equity and expediency, have been either withheld or only partially conceded Between contending claims the Bill does not in my opinion strike a just balance, and it seems to me that unless some further modifications are made in the direction which I have indicated, it will not answer the purpose of definitely setting at rest the disputes between landlord and tenant in Bengal.

AMÍR ALÍ.

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*Minute.*

I SIGNED the preliminary Report of the Select Committee last year, on the understanding that I postponed the expression of my opinion on certain questions until the submission of the final Report to Council. Some of the sections to which I then objected have, during the subsequent revision, been removed from the Bill, others have been modified, and I now confine my remarks to four principal points. I desire, however, at the same time to record in general terms my hesitation in regard to several other provisions in the Bill. For the Select Committee has been asked to deal with the entire relation of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land-right in Bengal; for in Bengal almost alone among the Provinces of India, there is no central department of statistics, and until quite recently there was no agricultural bureau, which might in some measure have compensated for the evidence of witnesses heard in the Districts. But while I regret the defective method of enquiry originally adopted, I acknowledge that, at the stage which the measure had reached when the Bill came before

the Select Committee, the time for an effective local enquiry had gone past. The Committee heard the views of several gentlemen in Calcutta on two minor points, but no body of evidence has been collected in the Districts and subjected to cross-examination. The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.

Coming to specific grounds, I object, in the first place, to the application of one set of minute provisions for the regulation of rent to two Provinces in which the relation of landlord and tenant is so widely dissimilar as in Bengal and Bihár. [Section 1 (3).] The statements before the Committee show that in Bihár, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator; while throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the fundamental differences between Bengal and Bihár find no recognition in the Bill. The effect of this has been, in my opinion, to increase the difficulty of making effective provision for either Province. Thus in regard to perhaps the most important question dealt with in the Bill, namely, the restrictions to be placed on enhancement of rents, the Bengal Government declared that to limit rents to one-fifth of the gross-produce was a necessity for Bihár, while the imposition of that limit was found indefensible for Bengal. The one-fifth limit has accordingly been dropped, and minor restrictions have been introduced. It seems doubtful to me whether some of these minor restrictions do not go further than is warranted by the facts in Bengal; and it is more than doubtful, considering the statements made on behalf of the Bengal Government, whether these restrictions will meet the necessities of Bihár.

I object, in the second place, to the discouragement which the Bill places on the reclamation of waste lands by proprietors at their own expense. Important provisions in the Bill rest on considerations arising out of the pressure of the population on the soil, and on the necessity of protecting the cultivator against the monopoly in land which is thus conferred on the landlord. The most direct remedy for this state of things is to increase the area available for cultivation Yet the Bill not only gives no new inducement to landholders to reclaim wastes, but places discouragements, which did not exist under the previous law, upon their doing so. As regards lands brought under cultivation by means of reclamation leases, the landlord will be in a rather worse position than before; for the occupancy-right will now commence to accrue to the tenants during the currency of such leases, and it may be enforced immediately on their expiry. As regards lands brought under cultivation by the landlord himself by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps at a large outlay, by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land: if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted, by special contract in his lease, to bar the growth of occupancy-rights in land which he has reclaimed by his own servants at his own expense. Considering the pressure of the people on the cultivated soil, and the existence of large unreclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land. Considering that the Bill, in order to deal with the evils of over-population, restricts the former rights of the landholders, I think that such discouragements are not only impolitic but unjust. I purpose, therefore, to move amendments in Council, which will have the effect of protecting a landlord who reclaims at his own expense *bonâ fide* waste lands, against the growth of occupancy-rights in those lands during a reasonable period to recoup his outlay, say, for thirty years.

In the third place, I object to certain of the provisions for the enhancement and reduction of rents on the ground of a rise in prices [section 39]. The Bill substitutes for an old and a scarcely workable ground of enhancement, namely, a rise in the value of the produce, a much more simple ground, namely, a rise in the prices of staple food-crops. The latter contention would in any case be more easily susceptible of proof. But the Bill further simplifies the burden of proof, by directing that the Courts shall be guided by certain lists of prices to be published in the official Gazette. These lists are to be of two kinds; one set of lists are to record current prices in the future, the other set refer to prices in the past. A new and sharp weapon of enhancement is thus placed in the hands of the landlord; but subject to conditions on its application imposed by the Bill in favour of the tenants, I believe it to be a fair ground of enhancement. The weapon is two-edged; it cuts against the tenant as a means of enhancement if prices have gone up, and against the landlord as a ground for the reduction of rent if prices have gone down. It is obvious, however, that as the Bill entrusts the Local Government with the duty of supplying the evidence, it should take reasonable guarantees that the evidence thus supplied shall be good evidence. The draft Bill of last year provided that all the price-lists officially published should be conclusive evidence. The Bill as now finally settled directs that the Courts shall presume that the facts stated in the lists are correct unless and until it is proved that they are incorrect; thus giving the value of presumptive evidence to both the sets of lists.

I believe that the lists to be prepared for current prices in the future, under the safeguards provided by the Bill, will merit this degree of credibility: but that the lists, purporting to record prices in the past, do not. This latter class of lists will have to be compiled, *ex post facto*, for a period running back ten or fifteen years, from certain price-lists which were collected

at a time when adequate safeguards were not taken to secure their accuracy, and when the effective safeguards now provided by the Bill for future price-lists were not thought of. At the period of their collection, moreover, it was never contemplated to give to them the value of conclusive or presumptive evidence in the Courts. I have examined some of the old lists. I do not think that they afford a safe basis for a recompilation which should be accepted by the Courts either as conclusive or presumptive evidence of prices in the past. They are valuable concurrent evidence, taken together with the evidence to be derived from the business books of grain-merchants, zamíndárs and dealers in export produce. I do not think that lists to be mainly compiled from them should now have a greater weight than the original lists would have had under the Evidence Act. I propose, therefore, to move an amendment which will have the effect of leaving the value of presumptive evidence to the lists prepared for current prices in future, but withdrawing that value from the lists to be compiled for prices in the past.

In the fourth place, while not dissenting from the powers granted by section 112 to the Local Government, in certain exceptional circumstances, to reduce rents, I wish to place on record the hesitation with which I have agreed to that provision. The exceptional circumstances contemplated are when the Government has to intervene between landlord and tenant "in the interests of public order or of the local welfare." On the one hand, the experience of the past, and the statements which have been made in regard to the future, seem to render it expedient that this power should, under due safeguards, be accorded to the Local Government. The Bill, in requiring that the previous sanction of the Governor General in Council must be obtained, provides due safeguards. On the other hand, I do not think that a general disruption of contracts between landlord and tenant, such as is involved by a reduction of rents on a large scale, should be effected by any authority of a less deliberative character than the Legislature itself. If, therefore, it ever becomes necessary to apply this clause to a considerable area, I hope that the process will be conducted under, or receive effect from, an express Act. It is in this hope that I have agreed to the provision in the present Bill.

I have thought it my duty to place on record objections to specific provisions of the Bill and to mention in general terms my uncertainty in regard to several important classes of rights with which it deals. I ought, therefore, to state clearly that I believe the Bill, taken as a whole, makes substantial improvements on the existing law, and that where it alters that law, the changes are, with certain exceptions, expedient and just.

W. W. HUNTER.

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## *Dissent.*

I DISSENT from this Report, because I am not satisfied that the Bill, as amended by the Select Committee, affords that effectual protection to the raiyat which the measure, as introduced into the Council, was intended to give. What the nature of that protection was, and on what grounds it was thought necessary, can readily be learnt from the Statement of Objects and Reasons, and from the speech delivered in Council on the 2nd March, 1883, by the Hon'ble Member who introduced the Bill. It was the intention of the Bill to secure to the occupancy-raiyat fixity of tenure, fair rent and free sale. The Bill accordingly declared, *first*, that every settled raiyat should have a right of occupancy throughout the village or estate in which he held land at the date of the introduction of the Bill; *secondly*, that his rent should never exceed one-fifth of the value of the gross produce of the land in staple crops; *thirdly*, that he might transfer his holding at his pleasure, subject to a right of pre-emption on the part of the landlord, and that the landlord's purchase of the holding should not extinguish the occupancy-right, but that the right should revive as soon as the land was let to another tenant. The interests of the non-occupancy-raiyat were not less carefully guarded. "Tenants of this class," said the Hon'ble Member who introduced the Bill, "should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords and the acquisition by them of the status of settled raiyats should be facilitated in every possibly way." The Hon'ble Member quoted with approval a remark made by Sir Ashley Eden, that "no raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent." In accordance with these principles, the Bill prescribed a maximum limit of rent for the non-occupancy-raiyat; it did not allow him to be ejected on the ground that the term of his lease had expired; and it provided that, if he were ejected for refusing to agree to an enhancement demanded by the landlord, he should be entitled to receive compensation for disturbance.

Such was the Bill which was introduced into the Council, and which was referred to the Select Committee. It was drawn with a full recognition of the character and the gravity of the evils which it was designed to remedy. "What we hope for" (said the Hon'ble Member who introduced the Bill) "is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the occupancy-right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined; and secondly, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat." In speaking of the necessity for legislation, and of the kind of legislation required the Hon'ble Member re-produced a striking passage from the Report of the Famine Commission. "We have received" (the Famine Commissioners wrote) "a large amount of evidence, remarkable in its weight and unanimity,

to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel no doubt that the condition of the rent-law and the way in which it is administered in Bengal are a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, owing mainly to this cause, at all times dangerously near to actual destitution, and unable to resist the additional strain of famine. We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. * * * * It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security, together with the protection of the tenant-at-will in his just rights, and the strengthening of his position by any measure that may seem wise and equitable."

These, I repeat, were the principles upon which the Bill was based, and these objects would have been effectually secured by the Bill as originally introduced into Council. In the amended Bill, fixity of tenure is weakened by the limitation of the definition of a settled raiyat to the village alone; fair rent is deprived of the safeguard (the only ultimate safeguard) of a maximum limit beyond which rent can never be enhanced; and free sale has disappeared altogether from the Bill, or survives only in a section which saves customary rights. The non-occupancy-raiyat has fared even worse, at the hands of the Select Committee than his occupancy brother. The gross produce limit of his rent is struck out; he is declared liable to ejectment on the ground that the term of his lease has expired; if he refuses to agree to any enhancement demanded of him, he cannot claim a judicial rent for a longer period than five years; and he may be ejected at any time before he has acquired a right of occupancy without obtaining any compensation for disturbance.

It will possibly be said that these alterations, sweeping as they may seem to be, are counterbalanced by other changes which have been made in the Bill, and that, when the account on both sides is fairly summed up, it will be seen that the objects of the original measure have substantially been attained. Let us consider how far this is the case as regards each of the two great classes of raiyats, and, first, as regards the occupancy-raiyat.

It must be admitted that transferability, or the right of free sale, is not an essential provision of the Bill. I believe that (in Bengal at any rate) it might usefully and safely have been conceded; but there were arguments in favour of a different conclusion, and it was open to the Select Committee to decide that transferability would not have the effect of either strengthening or extending the occupancy-right. I do not therefore desire to lay any stress on the abandonment of this provision.

With regard to fixity of tenure, the elimination of "the estate" from the definition of the settled raiyat is, I think, much to be regretted. If no middle course could be found, the Committee had to decide between a definition which might, in a few exceptional cases, entail a slight hardship on the landlord, and a definition which could easily be worked so as to produce, in a multitude of cases, a grievous wrong to the tenant. On this point the decision of the Committee was, in my opinion, a lamentable mistake. At the same time I admit that, as regards fixity of tenure, the position of the occupancy-raiyat is somewhat stronger under the amended Bill than under the present law, and that this object of the Bill has been partially, though still imperfectly, attained.

Fixity of tenure, however, without fair rent is worse than useless, and in the matter of fair rent the Bill signally fails to afford the occupancy-raiyat reasonable protection. He is protected under the existing law, by the fact that the enhancement provisions of the Act now in force have proved to be unworkable. Such a condition of things is a public scandal, and the Select Committee rightly resolved that just claims to enhancement should no longer be baffled by the uncertain wording or the complicated conditions of the law. But the Committee seem to have overlooked the danger of enlarging the facilities for the use of the enhancement sections without also taking precautions to guard against the abuse of them. The Bill puts enormous powers of enhancement into the hands of the landlords. The sections relating to enhancement on the ground of the prevailing rate have been re-cast in a form which will practically allow the landlord to raise the rent of every raiyat in the village to the highest rate which he can persuade or compel any one to pay. In suing for enhancement on the ground of a rise in prices, the landlord will find the evidence, which it has hitherto been impossible for him to adduce, provided by Government ready to his hands. He will have nothing to do but to lay before the Court the official price-lists, and a decree in his favour will follow as a matter of course.

The feeble palliatives which the Bill provides are impotent to restrain the evils which the working of the enhancement sections is calculated to produce. It is declared that no enhancement shall be decreed in excess of what is fair and equitable; that the rent of a raiyat shall not be enhanced at intervals of less than 15 years; and that, in extreme cases, the Government of India may interpose, and may depute an officer, not, as usual, to enhance rents, but to reduce them. The first of these provisions may occasionally be of use in tempering the rigour of the law, but it is of too vague and indeterminate a character to afford any adequate

protection. The second will make the pauperizing process more gradual, but not less certain or complete. And what shall we say of the third? Where is the wisdom of enacting a law the natural operation of which may produce a state of things which will require the law to be not merely suspended, but reversed? But in truth what is most to be feared is not such outrageous oppression as would call for the interposition of Government under this special provision of the Bill. What is most to be feared is that the gradual and steady operation of the enhancement sections will be a permanent bar to all improvement in the condition of the occupancy-raiyats. They will have no inducement to raise larger crops or to cultivate more valuable products, for they would be toiling for the benefit, not of themselves, but of their landlords. The machinery of this Bill they can neither resist nor evade.

These evil consequences would have been avoided if the Select Committee had accepted two of the recommendations of the Government of Bengal. That Government desired, first, to restrict enhancement on the ground of the prevailing rate to those individual cases which it was originally intended to meet, and secondly, to prescribe an absolute limit beyond which no claims to enhancement should be allowed. The Government of Bengal saw that, if the landlord's demand were restricted to one-fifth of the gross produce in staple crops, rack-renting would be effectually stopped, the cultivation of the more valuable crops would be encouraged, and the agricultural advance of the country would be ensured. Unhappily, these views were not accepted by the majority of the Select Committee, and the amended Bill leaves the occupancy-raiyat without any adequate security in the matter of fair rent.

With respect to the non-occupancy-raiyat, the original Bill was designed to protect him against unreasonable exactions, and to facilitate his acquisition of the right of occupancy. I have shown what stress was laid on these objects, and especially on the second of these objects, by the Famine Commissioners and by the Hon'ble Member who introduced the Bill. It is therefore somewhat remarkable that the amended Bill leaves the non-occupancy-raiyat entirely at the mercy of his landlord as regards his rent. When first admitted to occupation he must pay such rent as may be agreed upon between himself and his landlord. It is true that, if he is afterwards called upon to agree to an enhancement, he may demand a judicial rent for a term of five years. But this provision will be inoperative, for the raiyat will be aware that, unless he comes to terms with his landlord in the matter of rent, the landlord will not formally demand an enhancement, but will sue to have him ejected. Those who know the peasantry of Bengal know that a raiyat will agree to pay any rent rather than face the alternative of ejectment from his holding. The provisions of Chapter VI of the Bill will therefore enable the landlord to exact from the non-occupancy-raiyat the highest rent which the land can possibly bear, a rent which will leave the tenant nothing more than a bare subsistence: and the demand of enhancement may be repeated year after year.

It is remarkable, as I have observed, that the amended Bill affords the non-occupancy-raiyat no protection as regards his rent. But it is still more remarkable that it does nothing to facilitate his acquisition of the right of occupancy. It provides, it is true, that he shall not contract himself out of the power to acquire the right. But this stipulation is useless so long as the Bill affords a simple and effectual means of ensuring that the right shall never accrue. The right can be acquired only by 12 years' continuous occupation of village-land. The Bill leaves it in the power of the landlord to rack-rent the non-occupancy-raiyat during eleven years, to evict him in the twelfth, and then to re-admit him and begin the process again. In the populous parts of the country, the raiyat, who cannot live without the land, will have no resource but to submit.

Can it be alleged that such provisions as these redeem the pledges made when the Bill was introduced, or place the non-occupancy-raiyat in the position which he may equitably claim to hold? What was his status under the Regulations of 1793—the contract to which the landlords and their advocates so continually appeal? He was entitled (as Mr. Justice O'Kinealy has shown) to hold at the customary rate, and was not liable to eviction, except for non-payment of rent. What is his status under this Bill? He is a mere tenant-at-will, with absolutely no rights beyond those which his landlord may be pleased to allow him. It may not be possible to revert at the present day to the conditions of 1793, but at least it is reasonable to ask that the legislation of 1885 shall not place the non-occupancy-raiyat in a worse position than he held in 1859.

I cannot admit that there is any force in the plea that the landlords, as a body, are not likely to strain to the utmost the powers given them by the Bill. The legislature is not justified in putting one class of men at the mercy of another class, on the chance that the latter will use their irresponsible power with moderation. And I must add that I feel no assurance that, as regards the accrual of the occupancy-right, these powers will be moderately used. I have already quoted the words in which the Hon'ble Member who introduced the Bill referred to "the vigorous efforts now being made by landlords to prevent the natural growth of occupancy-rights." There is overwhelming evidence before the Council to show that this feeling among the landlord class is widely spread and deeply seated. I apprehend that landlords will not fail to use largely the opportunities which this Bill will give them. They will not merely prevent the growth of the right over lands now held by non-occupancy-raiyats, but, as occupancy-holdings from time to time fall into their hands by death, abandonment or surrender, they will treat the new tenants of these holdings in the same manner. "There could be no greater misfortune to the country," said the Famine Commissioners, in a passage which I have already quoted, "than that the numbers of the occupancy-class should decrease." The provisions of the amended Bill seem to me to threaten the country with this misfortune.

For these reasons I am unable to assent to the Report, or to regard the Bill, in the form which it has now assumed, as an adequate and final settlement of the questions raised in this great controversy. If the Bill is to be accepted, it must, I think, be accepted only as an instalment of the legislation necessary to place the relations of landlord and tenant in these Provinces on a secure and satisfactory basis.

H. J. REYNOLDS.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 13th February, 1885.*

## BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY presented the further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal. He said :—

"The Report and the minutes of various members of the Committee expressing their opinions on special portions of the Bill will be published as a supplement to the Gazette. There being no Motion before the Council, I am precluded by the rules from making any remarks on this occasion; only with Your Lordship's permission I wish to inform hon'ble members that I propose this day fortnight to move that the Report be taken into consideration, and I will ask the attention of members of the Council to Rule 28, which says that all amendments should be in the Secretary's hands three days before the Motion is made."

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*Extract from the Proceedings of the Council of the Governor General of India, dated 27th February, 1885.*

## BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Reports of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be taken into consideration. He said :—

OBJECT OF SPEECH.

"In moving that the Report of the Select Committee be taken into consideration, I do not propose to go behind what passed at the second reading of the Bill. Such questions as whether legislation was necessary at all, and whether legislation was barred by the terms of the Permanent Settlement, I consider to have been then decided, after sufficiently exhaustive discussion, and I, at least, shall not re-open them. What I propose to do is to review the work of the Select Committee, to show the nature and the reasons of the principal alterations they have made, and how far the Bill, as altered, is likely to succeed in securing those results which, in imposing on us our laborious and absorbing task, the Legislative Council had in view.

To review the work of Select Committee.

Costitution of the Committee.

"Before doing this, however, I may be permitted to say a few words as to the constitution and labours of the Committee. It was particularly strong in numbers, consisting of more than one-half of all the members of the Council. It comprised the selected representative of the Bengal zamíndárs, and though the death of our lamented colleague Raí Kristodás Pál Bahádur in the middle of our discussions was a grievous loss to them, and indeed to all of us, yet their interests could hardly have found a better representative than in his successor, who with inflexible constancy and even a more perfect knowledge of detail than his predecessor, contested every inch of ground, and displayed a temper and ability which showed how wisely the British Indian Association had made their selection. The zamíndárs of Bihár were specially represented, so also were the planters. Several of our members are of the legal profession, and in the course of that profession had acquired an intimate knowledge of the problems with which we had to deal. As will be seen from the published minutes attached to the Report, the cause of the raiyats had the advantage of the most powerful and most sympathetic advocacy. Nor were we deficient in the light that comes from a knowledge of the working of cognate systems in other provinces, and we had a further advantage in the assistance which a long experience in the task of comparing and tabulating the statistics of all the provinces of this vast empire enabled one of our members to extend to us.

Work of the Committee.

"The Committe sat 35 times last session, and 28 this session, each meeting lasting generally 3½ hours. The correspondence they had to study fills a shelf some 3½ feet in length, and whatever charge may be brought against them, that of want of industry, is certainly not sustainable. I make these remarks not merely that I may take this opportunity of expressing the thanks of the Government of India to the Committee for their unwearying labours and the great assistance they had given, but also in order to show to the Council that in a Committee so constituted the decisions of the majority may be accepted as at least *primâ facie* likely to be sound, and as certainly the result of an impartial and most earnest desire to do justice in the clash of conflicting interests.

Its *primâ facie* value.

Order of subjects.

"In what I have now to say I shall follow, as far as may be, the order of subjects as they come in the Final Report of the Select Committee, though I must take you back by reference

occasionally both to the Intermediate Report and to the Statement of Objects and Reasons which explained the original provisions of the Bill. And in this order the first point I have to notice is in regard to the definition of "estate" and "proprietor." It will be observed that the main alteration we have made is to add to the definition of "estate" words expressly including Government *khás mahâls*, and unregistered *lakhiraj* lands, and we have omitted a proviso that appeared in the Bill No. II. The insertion of the unregistered revenue-free lands is intended to meet a real omission in the first draft of the Bill. The insertion of Government estates is intended to clear up a singular misapprehension as to its being the intention of Government to exclude its own estates from the operation of the Bill—a misapprehension which, though entirely erroneous, has given rise to a good deal of criticism on our good faith.

Definition of "proprietor."

Insertion of Government of khas mehals.

"The original definition made the Bill apply to all land entered in any of the general registers of Government, and if any one will turn to section II, clause V (Vol. 1, page 137) of the Bengal Board's Rules they will see that all *khás mahâls* and raiyatwari tracts, all lands even temporarily occupied by Government for public purposes, and all waste and other lands not assessed to revenue have to be entered in these registers. It is difficult to understand how any one should suppose in these circumstances that it was the intention of Government to exempt their own estates. I can only suppose that the proviso which appeared in Bill No. II, referring to certain Government taluqs, was not fully understood. That proviso had reference to some *noubad* taluqs in the Chittagong district, which, though for revenue purposes treated as tenures, were for convenience sake entered in the register of estates, and it was in order to prevent a wrong deduction as to the nature of these tenures being founded on the fact that they were entered in the estate register that a late member of the Bengal Board of Revenue asked for the insertion of the proviso. For the purposes of this Bill it was not wanted, and it has accordingly been struck out, but I repeat emphatically that it was never the intention of Government to exempt its own estates from the substantive provisions of this Bill, and out of abounding caution we have inserted words which can leave no doubt on this point.

Original definition applied to all lands entered in Government registers.

And therefore to all Government estates.

Explanation of proviso.

Since omitted.

"Coming now to the chapter headed Classes of Tenants, we have, as stated in the Intermediate Report of the Committee, attempted to describe rather than to define the various classes. It was urged upon us very strongly by Mr. Dampier, that the most serious practical difficulty arose from the impossibility of deciding whether a man was a tenure-holder or a raiyat, and that it was necessary to give the Courts and Settlement Officers some assistance in coming to a decision, even drawing, if necessary, an arbitrary line founded on the extent of the holding, and we have accordingly provided that where local custom was not sufficiently clear upon the point the Courts should look to whether the land was originally taken for the purpose of direct cultivation by the holder or for the purpose of indirect cultivation by settling raiyats on it, and that, further to assist the Courts in coming to a decision, there should always be a presumption that a tenancy of 100 bíghás was a tenure and not a raiyati holding. The presumption of course is based on the fact that nowhere in Bengal does a man take such a large holding as 100 bíghás with the object of cultivating more than a small portion of it himself, and the general opinion of the officers consulted is that the standard selected is a perfectly safe one.

Classes of tenants described, not defined.

Original object of the tenancy to be the test.

Presumption from 100 bíghás.

"In Bill No. II, the presumption was made conditional on the person having actually sublet a portion of his holding, but it seemed to the majority of the Committee that, if the presumption arising out of the size of the holding has any validity at all with reference to the object of the initial taking, the question of whether an acre or two is subsequently at a particular time sublet, is quite irrelevant. Of course if a large portion or the whole of it is sublet, this fact affords an indication of the original object of the holder which the Court would take into consideration, but it seemed wiser not to clog the presumption, by making it depend on the sublease of an arbitrarily fixed proportion of the holding—a proportion which would, in practice, be very difficult to prove, and we have therefore left it to depend entirely on the size of the holding.

Condition as to subletting a portion omitted.

"In the chapter on tenure-holders we have left the substantive position of the tenure-holder as regards his liability to enhancement unchanged. We have however somewhat modified the provisions of the original Bill relating to limitations on enhancement, and to registration on transfer. Under the original Bill the Courts, if granting enhancement against a tenure-holder, were bound to leave him not less than 10 per cent. and not more than 30 per cent. of his net rental. The minimum was subject to some alteration in the case of improvements made by the tenure-holder. The enhanced rent was also not to be more than double the previous rent, and was not to be again enhanceable for a period of ten years.

Tenure-holders Substantive position unchanged.

"We have thought it expedient to retain the provision which says that the tenure-holder shall not be left with less than 10 per cent. of his net profits. But we have omitted the restriction which limited him to 30 per cent of those profits, and on the other hand we no longer confine the enhanced rent to a sum equal to double the old rent.

Limitations on enhancement omitted.

"It seemed to us expedient to leave to the Courts a wider scope for discretion in both directions. In laying down a maximum, there is a danger of what is intended as a final limit being adopted as an equitable standard laid down by the legislature, and thus becoming the general rule, and we were unwilling to offer to the Courts any inducement to take a royal road to a decision instead of giving the fullest consideration to what would be fair and equitable under the circumstances. We have now directed them to have regard not only to the improvements of the tenure-holder, but to the circumstances surrounding the original lease, such as whether it was a reclamation lease, whether it was given in consideration of a bonus, and the like, and then to settle a fair and equitable rent, and we have extended the term for which the enhanced

What the Courts are to look to.

rent is to be fixed, both in the case of tenure-holders and for occupancy raiyats from 10 to 15 years.

Registration of transfers.

"In regard to registration on transfer of tenures, this is what the Select Committee report:—

'We have, in sections 12 to 16 of the Bill, so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

'The Bill, in its previous stages, provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office, and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

'A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re casting the portion of our Bill now under consideration, has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

'We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista, would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

'The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

'First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of assurances. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.'

"We have made similar provisions for securing notice being given to the landlord in cases of sale for an ordinary decree and of succession. In case of sale for arrears of rent there is no necessity for such notice.

Occupancy-raiyats.

"I come now to what I look upon as the most important part of the Bill—Chapter V, which deals with occupancy-rights, and on this subject I fear I shall have to ask your attention at some length. The main points are—(1) Who is to have the occupancy-right? (2) What are to be the incidents of that right? (3) What rules shall regulate enhancement of the occupancy-raiyat's rent?

Acquisition of the right.

"A very full discussion of the first question will be found at pages 5 and 6 of the Statement of Objects and Reasons, the gist of which is summed up in the statement that the Bill as introduced in Council makes 'the acquisition of the status of the khudkasht, or as he is termed in the Bill the settled raiyat, depend not on the holding of one and the same plot of land for 12 years, but on the holding of any raiyati land (whether the same or not does not matter) in the same village or estate for a period of 12 years whether before or after the passing of this Act.' That is to say, the Bill originally proposed to continue all occupany-rights already acquired; to define as above the status of a settled raiyat, and to provide that the settled raiyat of a village or estate as thus defined should have occupancy-rights in all lands which he might legally occupy in that village or estate. Bill No. II went a step further. The discussion in Council two years ago brought out the fact that whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy-rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy-rights was estimated at from 90 to 70 per cent. of all the raiyats in the country, but unfortunately, as was said in the course of the discussion, those rights were 'moral' rights, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case by legal proof the rights which were generally admitted to have accrued to the raiyat in the abstract. Acting on this view, the Select Committee introduced into Bill No. II the presumption which will now be found at section 20 (7) of the Bill before the Council. The presumption runs as follows: 'When it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years continuously held that land or some part of it as a raiyat.' The Committee justified it as warranted by the existing state of things in the Lower Provinces, and because, while the presumption tends to simplify litigation, it is one which the landlord can have no difficulty in rebutting where it does not hold good. This presumption the Committee desire to maintain, and the only change they have introduced during their late session in this part of the Bill is the elimination of the words 'or estate,' thus limiting the right to the village in which the raiyat cultivates. As this decision of the Committee has been very forcibly attacked by His Honour the Lieutenant-Governor and some other members of the Committee, it is right that I should explain to the Council the reasons which led me, as representing the Government of India, to vote with the majority on this occasion.

Presumption of status.

Elimination of the words "or estate."

Point noticed by the Select Committee.

"The inconveniences attending the retention of 'the estate' in the definition of settled raiyat was touched on in the Select Committee's Preliminary Report of last year, and the point was one of those referred by the Bengal Government for the opinion of its Officers. The great

majority of those officers were against the retention of the words. This fact will be found in the 23rd paragraph of the Bengal Government's letter of the 15th September last, where also are given the reasons which led His Honour the Lieutenant-Governor to dissent from the opinion of that majority and to insist on the extension of the status of settled raiyat to the estate as well as to the village.

"I have no doubt that in the course of the debate His Honour will do full justice to the arguments which are there so ably stated; but, put very briefly, they are these:—

Reasons urged by the Bengal Government for retention of the words.

"The expediency, he urges, of giving stability to the raiyat's position is admitted on all hands. Now 95 per cent. of the raiyats are so poor that they cannot possibly cultivate land at any distance from their homes, or, in other words, hold land away from their own village. On the other hand, if a man can get his landlord to give him a holding in another village (and it is only with his landlord's consent that he can obtain it), then it may be presumed that the landlord knows his man, and there is no sort of reason why he should not have the same stability of position in regard to his new land as he had in his old land.

"Now, if this were all that the definition involves, it would be difficult to contest the Lieutenant-Governor's position, and I for one would very willingly accept it; but the word 'estate' really involves quite a different set of considerations from these. An 'estate' is, so far as this argument is concerned, an administrative fiction.

Objections to retention of "estate."

"It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous share-holders. It may be part of a village, or it may be 100 villages. It may be the property of one man, or the property of 100 men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Rájá's estates, be let out into innumerable *patni* or permanent tenures (these tenure-holders subdividing it again, and in these circumstances what is one estate in the Collector's books becomes, for rent purposes, several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other's books, and know nothing of each other's raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy-raiyat, and the latter can immediately turn round and say that having acquired occupancy-rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy-right. Now to this argument the Lieutenant-Governor himself supplies the answer. He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate,' also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill.

Danger of shifting examined.

"It is possible, no doubt, that shifting may occur in exceptional instances, where a landlord has several villages in his own direct management within reach of the cultivator's residence, and where he is powerful enough. But in the case of a very powerful landlord, strong enough to do this and determined to break down the occupancy-right, I am afraid he will always find some door open, and it must be remembered that not only is the number of landlords who are in a position to do this very small, but also the number of tenants to whom the process can be applied is small also.

"I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the remaining tenth it is but an infinitesimal portion that can be exposed to the danger above explained.

Advantage of confining the khúdkásht rights to the village.

"On the other hand, as long as we confine the accrual of occupancy-rights to the village, we have an absolutely unassailable position. The *khúdkásht* raiyat's rights in the village are independent of those of the rent-receiver, and it matters not among how many estates the village may be divided. The raiyat is a *khúdkásht* raiyat of *that village*, and has by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village without reference to whom he pays his rent; but when once with the object of stopping gaps we take up more ground and apply the same rule to the estate, our position is no longer defensible. Not only is the theory new and unsupported by prescription or sentiment, it is open to a variety of practical objections, and by taking extreme instances it can be made to appear hopelessly

ridiculous. Looking, as I do, upon the danger involved to the raiyats on the one hand, by omitting 'estate,' and to the zamíndárs on the other, by including it as for the most part of exceedingly small importance, I greatly prefer, for the above reasons, to omit it. I do not think any intermediate device, such as that of limiting the 'estate' to so much of it as is comprised in one pargana, or in one permanent tenure, or by extending the village to an artificial area within a fixed radius, would be found to work satisfactorily, and none of these suggestions wholly commended them themselves to the Committee. I can only repeat my conviction that though the danger of raiyats being shifted from one village to another within an estate is not wholly imaginary, it is not a serious danger, and that the provisions in the Bill, supplemented as they are by a working presumption, will sufficiently secure nine-tenths of the raiyats in their just right.

Intermediate devices.

Incidents of the occupancy-right.

Transferability.

"Turning now to the incidents attached to the right of occupancy, it will be seen that we have made a most important change in regard to one of these incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom. This change was too important to be made at the direct instance of the Select Committee. It has the approval and sanction of His Excellency the Viceroy in Council. I am at liberty to state that I personally adhere to the opinion I expressed in the first debate, to the effect that both in Bengal and Bihár the custom has taken such deep root that it is desirable to legalise and regulate it, and that in both provinces this course would, in the long run if not in the immediate future, be attended by beneficial results both to the cultivators, and to the productiveness of the country, and so far I sincerely regret the decision arrived at. But I am bound to admit, apart from the arguments directed against the principle of transferability,—arguments founded on injury to the landlord, expropriation of the raiyat, and rack-renting of the actual cultivator,—I am bound to admit that the Committee found immense difficulty in devising any practical scheme of pre-emption, any satisfactory safeguard against the dreaded money-lender, any equitable method of securing to the landlord the fee which he now gets in some parts of the country, without injuring the raiyats of other parts where they habitually transfer without payment of a fee, and that in view of these difficulties there is something to be said for leaving the custom to strengthen itself, and crystallise into a shape which may hereafter render its regulation less difficult than it is at present. We have, moreover, made it clear that where the custom of transfer without the landlord's consent has grown up, it is not the intention of the legislature in any way to interfere with it. In all other respects we leave transfer alone, and the Council will not have to consider the schemes of pre-emption, registration, and landlord's fees, which occupied so much of the time and attention of the Committee.

My own adherence to it.

Difficulties in the way of giving effect to it.

Custom not interfered with.

Sub-letting

"While we have dealt thus with transfer, we have not felt it possible to interfere with the long-established right of sub-letting.

"The existence of this right is admitted in section 6 of Act X of 1859, and the authorities consulted have almost unanimously declared that it is impossible now to interfere with it. Moreover, if the tendency to alienate, by way of transfer, is not allowed free play, it must following the line of least resistance, force an outlet in sub-letting.

Scheme for restricting.

"To check this tendency, or at least to nullify its evil effects, was the intention of the provisions inserted as section 37 of our Intermediate Bill No. II. The scheme is explained fully in paragraph 27 of our Preliminary Report of last year. The main point of it was that an occupancy-raiyat, who sub-lets more than half his holding, should be deemed to be a tenure-holder, and thus his sub-raiyats should be in a position to acquire rights of occupancy. But it was felt that this would envelope all rent litigation in such clouds of uncertainty that it could only be permitted to take effect on the tenure being registered, and on this difficulty the whole scheme as wrecked. It was the very general opinion of the officers consulted, that in such cases registration would never be spontaneously sought for, and could not be enforced, and in view of the general objection taken to it on this score it was withdrawn. All that we have felt ourselves able to do in this direction is to provide in a subsequent portion of the Bill (section 85), that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered. To such sub-leases we have given some protection which I shall refer to hereafter, but if it is really desirable to check sub-letting, about which I am personally very doubtful, it will certainly not be done by leaving the sub-lessee defenceless against his lessor.

Withdrawn.

Protection now given.

To attempt by legislation.

Enhancement of an occupancy-raiyat's rent.

By private contract.

As first proposed.

"The next branch of this subject is as to the rules that should regulate enhancement of an occupancy-raiyat's rent, and in this we have made some important alterations. Dealing, first, with enhancement by private contract, it will be observed that section 39 of the original Bill provided that such contracts should only be valid after being approved and registered by a Revenue-officer, and the Revenue-officer was not to accept any such contracts if the enhanced rent was more than six annas in the rupee above the old rent (these figures were put in tentatively), or more than one-fifth of the gross produce.

Gross-produce limit.

"It was at an early stage obvious to the Committee that, even if the gross-produce limit was accepted as applicable to enhancements made by a Court, it was inapplicable as a test precedent to the registration of a contract.

Inapplicable to contracts.

"It would have meant that in every case before a contract could be registered, an exceedingly complex judicial enquiry should take place—an enquiry, too, in which the Revenue-officer would be practically powerless, as the only evidence available would be that of the two parties, who were *ex hypothesi* in agreement as to the terms. The approval of the Revenue-officer, though, if confined to the form of the contract, strictly in accordance with the conditions of

the Permanent Settlement, was felt, when extended so as to cover the question of the fairness of the conditions, to leave too wide a discretion to the Revenue-officer—a discretion, moreover, which, for the reasons above given, he would in practice be powerless to exercise.

"The registering officer will now, under the amended section, merely have to see that the agreement is not contrary to the express stipulations of the contract sections of the Bill, and that the raiyat understands it and is willing to enter into it.

Approval of the registering officer no longer required.

"The Committee have, however, it will be seen, reduced the fractional limit within which enhancements can be made by contract to two annas in the rupee. About this clause there was great difference of opinion in the Committee.

Fractional limits considered.

"On the one hand the objectors urge that it is useless putting in any such limitations at all, as if the raiyat agrees to pay the enhanced rent he will not care what the deed recites as to the amount of the previous rent, and while it will cause very serious embarrassment to scrupulous landlords, it will in no way serve as a check on the unscrupulous among them. It is also urged that any such check will force a landlord who wishes to enhance to take his raiyat in each case into Court, and then to demand more than he would otherwise be willing to accept—a process which is admittedly full of injury to the raiyat; that whereas if the landlord gets a decree for a sum more than two annas in the rupee on a test-case, instead of being able, as now, to make contracts on the same terms with his other raiyats, he will hereafter have to bring them one and all individually by separate suit into Court to confess judgment, and will thus obtain the same result only by a process far more expensive and far more demoralising to the raiyat. Another objection is that it altogether fails to meet the case of raiyats who are allowed to cultivate at specially low rents on condition of growing indigo or other special crop—a condition frequently used both by Government and by indigo-planters. When this condition comes to an end, there is no means of voluntarily adjusting the rent to the altered circumstances. The force of these arguments cannot be denied. On the other hand it is urged that 12½ per cent. (a fraction which allows of the rent being enhanced by 25 per cent. every 30 years, by 100 per cent. in less than 90 years) is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements, and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves, and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the Committee have removed from enhancement by the Courts, it is imperatively necessary for the very existence of the raiyat that enhancement by contract should be restricted within comparatively narrow limits. It is for the Council to say which of these views should prevail; for myself, I feel very strongly the necessity of some such check as the Bengal Government urge in regard to the over-rented parts of Bihár, and whatever doubts there may be as to this efficiency in practice of this particular check, no competent observer can doubt the reality of the danger at which it is aimed.

"We have inserted a section exempting from these conditions enhancements made *bonâ fide* on the ground of landlords' improvements, because we look upon such enhancements in the light of interest on the capital expended, and we desire to encourage improvements.

Exception in the case of landlords' improvements.

"One point remains under this head. We have, in order to lessen the harassment caused by frequent enhancements, provided that the enhanced rent, whether under contract or under decree of Court, should run for 15 years. This is an extension of the term (10 years) originally proposed by the Rent Committee, but it is only half of that (30 years) recommended by the Famine Committee. It is a very substantial boon to the raiyat, but is, we consider, perfectly just and necessary.

Period during which fresh enhancement is barred extended to 15 years.

"Coming now to enhancements by decree of Court, we have to consider the grounds on which enhancement can be demanded, and the considerations by which the Court should be guided in granting it.

Enhancement in Court.

"Under the Bill as first introduced, the great regulator of enhancements was intended to be the table-of-rates. This scheme, as I shall hereafter have to explain, has been eliminated from the Bill. Where a table-of-rates was not in force, the Bill provided for enhancement on the following grounds:—

(1) the prevailing rate;
(2) increase of productive powers of the land;
(3) increase in average prices of produce.

Three grounds

"Of these, the prevailing rate remains in a slightly altered form. Increase in the productive powers has been sub-divided into the two efficient causes which alone can bring it about so as to justify in our opinion the enhancement of rent. All other cases seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat. In these cases we do not see any just ground for enhancement. The two elements remaining are fluvial action and landlords' improvements, and these two are maintained as grounds on which a landlord can demand an enhancement. The third of the old grounds—'increase of prices'—has been retained and rendered, in my opinion, an exceedingly valuable instrument in the landlord's hands for obtaining an equitable increase of rent.

"To avoid misapprehension, I may mention here that increase of area is treated separately, as we do not consider that increased rent demanded on this ground is, properly speaking, an 'enhancement'

Prevailing rate.

"Going back, then, to the first of these grounds of enhancement, it will be seen from the dissents that we have been vehemently urged to get rid of the prevailing rate altogether as a ground of enhancement. This was first moved by the Bengal Government in Committee last year and was not accepted. It was then referred for the opinion of the local officers, and the outcome of that reference was to show a very even balance between those who were in favour of abandoning it and those who were in favour of retaining it in such a form as to safeguard it from abuse. The reasons which led the Lieutenant-Governor to desire its abandonment are very forcibly explained in paragraph 40 (pages 25 to 28) of his letter of the 15th September. Very briefly summarised they are as follows. By the Permanent Settlement a raiyat's rent might, as a rule, be brought up to the pargana rate. The theory of the pargana rate was that it was a fixed and ascertainable entity, and this was in many parts of the country no doubt the fact. Where there was such a rate authoritatively established, it was fair, and was part of the old right of the State landlord, that the raiyat, when not protected by pattá, should pay according to that rate. But the established pargana rate disappeared, and there is now no prevailing rate.

Reasons suggested for abandoning the prevailing rate.

"The landlords have been accustomed to take what they can get; rents are as often as not fixed in a lump sum on the holding and not differentiated according to the various qualities of the soil.

"In the absence of a real prevailing rate, the Courts have to take the average of the most prevalent rates in the vicinity. This means that A's rent is to be enhanced because B and C, being in debt, or otherwise at their landlord's mercy, have agreed, or pretended to agree, to pay enhanced rates. There is ample evidence that, apart from the natural effect of such competition-rents as have replaced customary-rents, bogus-rents are fabricated and kept on the jamabandis with a direct view to bring up the standard of the prevailing rate. Proposals have been made to exclude from consideration in determining the prevailing rate the effect of recent initial or competitive rents, but in the long run this would be impossible, and any way it does not cover the whole ground. These considerations led the Lieutenant-Governer to propose the absolute abandonment of the section, except where a prevailing rate is *established* by a Settlement-officer under Chapter X. The question was very fully discussed in Committee, and the result is given in paragraph 20 of our Report, which runs as follows:—

Reasons which prevailed with the Committee for retaining it.

'20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent," we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.'

Modifications in form.

"I may have more to say on this subject when specific amendments are proposed, but for the present I will only observe that I believe in the amended section we have accurately retained the existing substantive law as interpreted by the Courts, and have only introduced the necessary safeguards above explained; we have, however, added a qualifying clause which would enable the raiyat to plead any sufficient reason there may be for his being allowed to hold on at a lower rate, have limited enhancement to those cases where the difference between the raiyat's rate and the prevailing rate is substantial so as to prevent the section being used for purposes of harassment, and have indicated that where a local enquiry is necessary to ascertain the prevailing rate it should be conducted by a properly qualified Revenue-officer.

Increase of prices.

"The next ground in the order of our Bill on which enhancement may be demanded is increase of prices. We have made some alterations under this heading, but I would first explain the scope of the section. The prices referred to are those of the staple food-crops, and are entirely independent of the particular crop which may happen at any particular time to be grown by the raiyat. We take the prices of staple food-crops as our standard both on grounds of principle and on grounds of convenience. Starting from the principle that existing rents, even if not corresponding strictly to soil capacity, are yet to be considered fair and equitable, we hold it to be entirely unjust and contrary to good policy that they should be made to vary according to whether the raiyat at any particular time grows a special crop which may be fetching a high or a low price. We would not make the landlord's rents depend on whether the raiyat is shrewd or the reverse, nor should they in any way in the existing condition of agriculture fluctuate with the fluctuations of foreign markets for such crops as jute, safflower, oilseeds, cotton, &c. What we do mean is, that the landlord should not unduly suffer nor the raiyat unduly prosper from a permanent or long continued alteration in the value of money, and the only practical standard which can be applied to test this point is that of the price of staple food-crops.

"We have made other alterations. Formerly, it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may under this Bill take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent for the last 20 years, statements

Alteration in law to facilitate proof.

of past prices, and in future to record prices accurately, publish them for criticism, and finally, after revision, publish statements of annual average prices which the Courts will receive as presumptive evidence.

"We have, I think, by this scheme redeemed the pledge that Government would put the power of enhancement 'on such a footing that it will readily be enforceable in practice.' Before leaving this part of the subject, I must refer you to paragraph 18 of our Report, which deals with the deduction to be made to cover the effect of increased prices on the cost of cultivation. We are of opinion that the tendency in this country is for the cost of cultivation to increase in a higher ratio than prices. So far as the labour is done by the cultivator's family or by labourers paid in grain (as is mostly the case in India), no benefit under this item can accrue to the cultivator from increase in prices. On the other hand, as population and prices have increased, pasturage has diminished; cattle are dearer to buy, dearer to keep, and less remunerative; manure is dearer, and so is fuel; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation; we recognised the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it at one-third.

Deduction to cover increased cost of production.

"In regard to the two remaining grounds of enhancement, namely, increase in productive powers caused by landlords' improvements and by fluvial action, I would only mention here that we have provided facilities for at any time registering and recording landlords' improvements, and we have decided that under the head of fluvial action the Courts shall not take into account any increase which is merely temporary or casual.

Remaining grounds of enhancement.

"Before leaving this subject of enhancements I must explain the alterations we have made on the limitation to be placed on enhancement.

Limitations on enhancement.

"The Bill, as originally introduced, provided that rents should never be enhanced so as to exceed one-fifth of the value of the gross produce, estimated in staple crops, nor should enhanced rent ever exceed double the old rent. In the Intermediate Bill (No. II) the gross produce limit had been rejected, and on the other hand the fractional limitations had been raised in one case to eight annas in the rupee, in others to four annas in the rupee. In the present Bill we have with the consent of the Bengal Government abandoned these fractional limitations without being able, as the Bengal Government wished, to restore the gross-produce limit.

"I hope to be pardoned for touching on this point at some length.

"The gross-produce limit was suggested by the Bihár Committee in 1878, who would have fixed it at one-sixth; it found a place in the scheme of the Rent Commission and of Sir Ashley Eden's Bill at the tentative figure of one-fourth; it was one of our proposals to the Secretary of State, and was incorporated in the Bill as introduced into the Legislative Council, having then been changed at the instance of the Bengal Government to one-fifth. I may also say that, in respect to its principle, it had at that time on the whole been not unfavourable received by the zamindárs. It was not therefore lightly excluded from the Bill by the Select Committee which sat last year, though grave doubts had been expressed in the debate in this Council, among others by His Honour the Lieutenant-Governor, as to the possibility of adopting any universal standard. The line of argument which led to its abandonment was somewhat as follows. In all the previous stages of the discussion the machinery on which reliance had been placed for fixing a fair rent had been what is called the 'table-of rates.' This meant that a Revenue-officer should, after due enquiry, classify soils over a given area, and, judging mainly by existing rent-rates, fix a fair rate of rent for each class of soil. This enquiry would have involved by a minute process of investigation and experiment the ascertaining of what was for each class of soil the average gross outturn in staple crops. Thus ascertained, the figures would remain on record, and in suits for enhancement, &c., the Courts would only have to refer to them, and would thus be able, by applying the maximum test, to check any obviously unfair and unreasonable enhancement.

Gross-produce limit.

Reasons for abandoning it.

Failure of scheme for table-of-rates.

"Before, however, the Committee had begun its labours, the Lieutenant-Governor had, at the instance of the Government of India, deputed selected officers to four or five experimental areas to ascertain if, as a matter of fact, rents had any such fixed and stable relation to classes of soil and produce as would enable the Revenue-officer to fix any table-of-rates based on existing facts. The result of the enquiry was disastrous to the scheme of a table-of-rates. It was found in almost each area subjected to enquiry not only that the multiplicity of rent-rates was almost inexhaustible, but that little relation could be traced between the existing rates and the quality of the soil. Consequently the table-of-rates as an adequate general machinery for regulating rents had to be abandoned, and the matter relegated to a great extent to the discretion of the Courts; and with the table-of-rates went the process of ascertaining and recording in an accessible form the average gross-produce of each class of soil.

"This rendered it necessary for us to reconsider the expediency of retaining the gross-produce test as a maximum, and finally we decided, after some discussion, to abandon it both as unworkable and unfair. It is obviously unworkable in regard to private contracts, because it involves an enquiry which no registering officer can make before a contract is registered.

Impracticable in regard to contract.

"We held it to be unworkable by the Courts, because no Court has at its disposal the machinery for ascertaining the facts. The Lieutenant-Governor has traversed this argument by asserting that we do not want scientific accuracy; and such an estimate as we do require can be obtained by the assistance of a panchâyat of raiyats who are presumably experts, and he points to the estimate made for grain-rents as an illustration. But the estimate in grain-rents is an estimate of the actual crop on the ground before their eyes—an estimate which is obtained by reaping and measuring samples. What the panchâyat in the other case would have to

Impracticable in regard to suits.

ascertain is very different. They would have to say what a field which may be growing tobacco or sugarcane or opium would grow, not in any particular year, but over an average of years, if it was sown with staple crops. They or the Courts would then have to ascertain what would have been the price which the raiyat might have received for this produce over an average of 5 or 10 years. There is ample evidence to show that we have hitherto failed to ascertain with anything like accuracy what a bíghá of land *does* produce over an average of years of the crop actually grown upon it: to ascertain what it might produce if some other crop were grown is an infinitely more difficult problem. Then the panchâyat must be paid, which adds to expense, and there is always the danger of their opinion being in accordance with the longest purse.

Unfairness of the test. In relation to cost of cultivation and to area of holding.

"The unfairness of the test is of not less importance. The produce on two fields being the same, the maximum rent as limited by this test is the same; but on one of these fields it may cost twice as much to raise the crop as on the other: the margin left to the raiyat will in one case be sufficient; in the other it will not preserve him from starvation.

"The relative size of the holding will similarly interfere with the applicability of the test. The same margin of produce per bíghá left to the raiyat may be quite adequate where he holds 20 bíghás, and may mean absolute starvation where he holds 4 only.

Dangerous effect of fixing a permanent standard in face of increasing population.

"Another very serious objection to the scheme is this: as population advances the average area of each man's holding must diminish, and consequently the raiyat will require a larger proportion of the gross produce of his holding for the mere support of himself and his family. A less proportion will therefore remain as rent for his landlord. This is a necessary tendency, while population increases at its present rate, and is, moreover, wholly confined to unscientific agriculture for subsistence. At the beginning of this century we have, in the Regulation I of 1804* for invalid jaghirs, a clear proof that Government then thought a cash rent equal to two-fifths of the gross produce a fair standard. To-day the Government of Bengal think one-fifth the maximum consistent with safety. If the Government of that day had been called on to fix a general standard they would have fixed it probably at two-fifths. It would be as dangerous for us to lay down now a permanent standard of one-fifth up to which, by the inevitable law which makes water find its level, rents would surely rise, as it would then have been for Government to lay down the standard at two-fifths. Until you can limit the amount of population to be fed you cannot with any safety say what proportion of the gross produce shall go to the landlord and raiyat respectively.

Committee objected to its principle and doubted its efficiency in practice.

"The Committee therefore, after full consideration, condemned the principle of the gross-produce limit, because it left out of consideration other elements of equal or more importance in determining a fair rent. It took no thought of the cost of cultivation or of the size of the holding, or of the relative productiveness of it. They also objected to it in practice, because they thought the problem was one which the Courts could not solve, and because the attempt to solve it must add overwhelmingly to the cost of rent-suits—a burthen, which, as the *onus probandi* is on the raiyat, must inevitably fall on him in a large number of cases. So far we had not discussed the special fraction which it was proposed to introduce. Last autumn the Bengal Government again urged in the strongest terms the imperative necessity of retaining the gross-produce limit as the only ultimate check on enhancements which might otherwise, under the prevailing-rate scheme, become destructive to the raiyat, and which certainly could not with safety be borne in Bíhár.

Consideration of test with reference to specific limit of one-fifth

"The matter was again carefully considered, there being a decided readiness to accept the necessity of establishing a final check if one could be found, and this time the question was considered with reference to the special fraction proposed. The evidence as to average rates in each district is not such as can be altogether relied on, but, such as it is, it satisfied the Committee that the contention that a raiyat *can* not pay more than one-fifth of the estimated value of the staple crop is one which it is impossible to maintain. So far as it goes, and so far as the enquiries made by selected Revenue-officers last year bear upon the point, the evidence shows that in many districts which are not supposed to suffer from rack-renting, and in Court of Wards' estates as well, the raiyats *do* pay more than this proportion. But the evidence shows more than this: it shows that the relation of rent to gross produce varies so enormously (the Board give the result of their experiments as showing a variation from 67 per cent. to 7 per cent.), that it would be impossible to apply any one standard to all parts of the country, and that no sufficient remedy could be found in the direction of altering the limit to one-fourth or any other uniform fraction. It occurred to me that the test might perhaps be safely applied after a special enquiry in each district or smaller local area such as the table-of-rates contemplated, but this idea was not favourably received, and the Government of Bengal no longer press the scheme. Its loss however is made a ground of objection to the Bill as it stands; but fully as I recognise the real deficiency in the Bill of any adequate check on rack-renting in certain parts of the country, where enhancement is incompatible with the welfare, almost with the existence, of the raiyat, I must yet say that I consider the Committee were amply justified in refusing to accept a remedy which, in the shape proposed, was indefensible in theory, and would probably prove useless in practice.

Possibility of applying it after special enquiry.

Finally abandoned

Fractional limits condemned.

"The alternative fractional limits which had been inserted last year by the Committee, meanwhile, had been condemned by the Government of Bengal.

* Section IX (6):—

"The proprietor of the land shall be entitled to rent in the proportion of two-fifths of the annual produce, whether it be in kind or in money, as may be agreed on between the parties concerned in the adjustment. This rent shall not be liable to any variation and shall be paid to the zamíndár or other proprietor."

"As I have said in regard to tenures, there was a danger in establishing a maximum which would inevitably tend to become a standard of enhancement. They involved also the erroneous principle of adding most to the highest rent and least to the lowest; and we thought that, looking to the limitations which the grounds of enhancement carry within themselves, namely, in one case the rate prevailing in the village, and in that of prices the actual increase, minus one-third, it would be safer to trust to the discretion of Courts and to leave them within those limits to be guided by what is fair and equitable.

"We have therefore discarded the fractional limits on enhancement in Court, but I must repeat that it was the abandonment of these successive checks which led the Bengal Government to urge on us so strongly the necessity of strictly limiting enhancement by contract, and I trust this fact will be remembered when dealing with the limit of two annas in the rupee to which such contracts are subjected.

And abandoned on condition of limitation of enhancements by contract.

"The only other point remaining in this chapter which I need notice, is the alteration which we introduced into the provisions for produce-rents in our preliminary Bill of last year. For the reasons given in paragraph 43 of the Intermediate Report, we eliminated the maximum that had been imposed on produce-rents, and we gave discretion to a Revenue-officer to refuse an application for commutation if opposed. We also added rules for his guidance in deciding what the equivalent money-rent should be. I need not take up your time at present by examining these rules.

Produce rents.

"Having dealt with the occupancy-raiyat, we must now turn to the non-occupancy-raiyat, who was called in the original Bill the ordinary raiyat. This name we have changed for reasons given by Mr. Reynolds and the Government of Bengal, to the effect that the non-occupancy-raiyat is not an ordinary raiyat, the ordinary or customary raiyat being the khudkasht.

Non-occupancy-raiyats

"Around this raiyat, whatever he be called, a severe conflict has arisen. Some of the minutes of dissent declare that a great deal too much has been done for his protection, others say that he is entirely unprotected. Mr. Reynolds says the Bill 'affords him no protection as regards his rent, and that it does nothing to facilitate his acquisition of the right of occupancy.' Bábú Peári Mohan Mukerji says: 'The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat.' The Maháráj á of Durbhunga agrees with the latter, Mr. Amír Alí with the former. His Honour the Lieutenant-Governor also says the Bill 'leaves the non-occupancy-raiyat practically unprotected, and that on this point the Committee have departed from the intentions of the legislature and the conclusions of authoritative opinion.'

Differences of opinion.

"If this view were correct, I could only reply that among the conclusions of authoritative opinion which we have not departed from is one no less authoritative than that of His Honour the Lieutenant-Governor himself. In his speech on the second reading of the Bill in this Council, the Lieutenant-Governor, after urging that the Regulations of 1793 attempted only to protect the *khudkasht* raiyat, and that only so long as we dealt with his representative was our position unassailable, went on to say that 'it would be unreasonable and inequitable to extend the right of occupancy to every raiyat in the country,' and that he most cordially concurred in the maintenance by the Secretary of State 'of the distinction deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator.' 'It was to the resident raiyat and him alone,' he says further on, 'that any ancient privileges and rights appertained' and accordingly when he came to deal with the details of the Bill, he said 'I am unable to accept the provisions of Chapter VIII (the ordinary raiyat) which deal with compensation for improvement and disturbance. I think too, though I myself have suggested a 20 per cent. (gross produce) limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the province.'

The Lieutenant-Governor's view

"If then it were the case that we have given the non-occupancy-raiyat little or no protection, I might at least plead high authority for such a course; but I deny that it is the case, and I do not rest our defence on such authority. The line of action we have endeavoured to follow has been to keep, as directed by the Secretary of State, a marked distinction between the occupancy and non-occupancy-raiyat, but, to facilitate the acquisition by the latter of occupancy-rights, to give him some protection against undue enhancement, without barring the zamíndár absolutely from all voice in the selection of his tenants or in the determination of their rents. One party of the dissentients would leave the non-occupancy-raiyat absolutely at the mercy of the zamíndár without protection of any kind; the other party, in its endeavour to stop up every gap by which a zamíndár could possibly find a means to injure his tenant, would force the zamíndár to retain for ever, subject to a heavy fine, any paikasht raiyat he had once admitted on the land, and would make the acquisition of occupancy-rights inevitable.

Nature of protection afforded by the Bill.

"The latter course would be contrary to the orders and intention of the Secretary of State, the former would be destructive to the stability of the cultivator and against the interests of public policy. I think that the attacks of the dissentients from two such opposite standpoints may fairly lead the Council to conclude that we have adopted a just and moderate view, and have taken the line which is fairest to the two contending interests.

"Under the existing law the non-occupancy-raiyat can get a pattá at the rates agreed upon with his landlord. He can be ejected at the expiry of his lease, or, if without a lease, at any time after notice to quit. His rent can be enhanced as often as the landlord likes after service of notice of enhancement.

Protection under the existing law.

"We have provided that, after the expiry of an initial lease, he should still be liable to be ejected, but only after his first lease, not if he is permitted to hold on; and unless the suit for

Protection under the Bill.

ejectment is brought within six months after the lease expires, the right to eject on that ground lapses. He will always be liable to ejectment by *suit* for non-payment of arrears. He will be liable to enhancement in two ways, either by registered agreement, or by suit in Court, but enhancement by suit carries with it, if the raiyat accept it, a lease for five years, at the rate fixed by the Court, after which, unless he has meanwhile acquired rights of occupancy, he can be ejected.

Alteration made by the Committee.

"The Bill, as originally introduced, was silent as to ejectment after the initial lease, and the check it proposed on undue enhancement was (1) a gross-produce limit, and (2) that the zamíndár should pay compensation for disturbance graduated according to the ratio of enhancement demanded. It is on these points that the Government of Bengal objected to the conclusions of the majority, and asked us to go back to the original Bill. 'In regard to compensation for disturbance, I may say that at the original discussion in Council it was more objected to than any provision in the Bill, and it was condemned, not only, as I have already mentioned, by the Lieutenant-Governor but also in stronger terms by Mr. Reynolds. He said: 'the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me objectionable.' We found that Mr. Reynold's condemnation was endorsed by others whose opinions we could not disregard, and we abandoned it. As a substitute the judicial lease for five years was proposed and accepted, and so far the difference between the safeguard provided in the original Bill and that now given is that whereas, under the old Bill, the non-occupancy-raiyat objecting to pay the enhanced rent demanded of him could be ejected at the landlord's discretion subject to the payment of a fixed sum of money, he can now have the rent fixed by the Court; if he refuses to pay this rent he must go; if he accepts he is secure in his holding for another five years.

Abandonment of compensation for disturbance.

Substitution of judicial rent with a five years' lease.

Effect of this protection.

"The security from ejectment and from undue enhancement which this provision affords, and the additional security given by the rule that all agreements for enhanced rent must be registered, do unquestionably facilitate the acquisition of the occupancy-right, though they are of course a long way short of the security which that right confers; and I am bound to say that, on this point, the two sets of criticism which I have read out to you seem to me equally exaggerated and unreal.

Initial lease.

"There remains the question of the initial lease. I have explained to you that, under the existing law, the landlord has a right to eject a non-occupancy-raiyat at the end of his initial lease.

Objection of the Government of Bengal.

"The Government of Bengal urged that this provision should not be maintained, and that, after having once been admitted to cultivate, no tenant should be ejected except upon receipt of compensation up to one-fourth of the rent which he has paid. I have explained to you that the considerations which led the Committee to eject this proposal were, *first*, that it was only fair that a zamíndár should be able to give a new tenant a period of trial to ascertain if he was likely to be a satisfactory tenant before establishing him permanently, and, *secondly*, that the proposal led directly to the effacement of the distinction between the two classes of raiyat which the Secretary of State had insisted on our maintaining. I do not, however, deny that the provision is one which can be taken advantage of to prevent new tenants hereafter from acquiring occupancy-rights. It will not hurt existing tenants to any great extent; it can only touch in the future the restricted class who are not settled raiyats of the village, and these it can only injure where a regular lease is given, and where the zamíndár is careful to sue within six months of the expiry of the lease.

Reasons for retaining the rule. Dangers inherent in it.

View of Bábú P. M. Mukerji.

"Thus restricted I should not have supposed that the right could do serious harm, but the contention of Mr. Reynolds has received valuable support from the quarter whence he can least have expected it, and the representative of the zamíndárs corroborates his prediction that they will use this provision to the utmost of their power to prevent the accrual of the occupancy-right. He says, and he ought to know, that 'having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy-raiyats to mere tenants-at-will.' It is true they have the power at present, and to some extent, perhaps, make use of it, but I had not expected such authoritative testimony to the fact that the zamíndárs prefer a set of serfs to stable and improving tenants; and I confess that if anything could make me doubt the wisdom of the decision arrived at by the Committee, it would be the gratuitous testimony of the Bábú to the evil use which will be made of it.

Gross-produce limit.

"The application of the gross-produce limit to the non-occupancy-raiyat's rent must, I fear, stand or fall with its application to that of the occupancy-raiyat. If it were deemed applicable to the latter I should be glad to see not only the system but the identical standard applied to the former, but if it is condemned as impracticable in the one case, it will be difficult to maintain the propriety of applying it to the other.

Under-raiyats.

"The next chapter deals with the under-raiyat. This class we have left as in the Intermediate Bill No. II, with only the nominal protection of a fractional limit above the head rent beyond which the lessor cannot recover in Court. This is to my mind the most unsatisfactory part of the Bill, but the Committee were unable to afford to under-raiyats any real protection without subverting the customs and traditions attaching to the status. So long as they are liable to arbitrary ejectment, there can be no protection against arbitrary enhancement, and the protection afforded by the Bill can in practice only refer to arrears of rent. With the right to eject, the lessor will always prefer this method of attaining his object to that of a suit in Court, so that the protection is, as I said, nominal. In fact the only practicable method of protecting them would be by giving to under raiyats sub-occupancy rights against the lessor, of the same

Protection visionary.

nature, though not necessarily in the same degree, as the occupancy-raiyat has against the tenure-holder above him. No such plan would, at the present time, be favourably received, as it is contrary to existing custom and is in that sense justly condemned as revolutionary. Moreover, the question is not at present of serious importance, though as population increases it is likely to become so; but I wish to say that in regard to the under-raiyat I do not think the Bill can be considered to be in any way a final settlement of the difficulty, and the next generation will probably have to reconsider his position.

Problem remains to be solved

"I come now to Chapter VIII, which is headed General Provisions as to Rent. The chapter opens with the sections which contain the well-known presumption that a tenure-holder or raiyat, who has held for 20 years at an unchanged rate of rent, shall be presumed to have held at that rent from the time of the Permanent Settlement and shall therefore not be liable to enhancement.

Chapter VIII

The 20 years' presumption.

"The first alteration to be noticed is that we have omitted the provision making this presumption applicable to produce-rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption. We have, moreover, exempted from this presumption tenures in any area to which the registration of tenures under the Bengal Bill is applied, and both tenures and holdings in any area in which a record of rights is made. In those cases the rights having been once registered there is no ground for continuing a presumption the object of which is to facilitate the proof of existing rights rather than to create new rights.

Not to apply to produce-rents.

Nor to recorded and registered holdings.

A more important change, however, was strongly urged upon us, which the majority of the Committee did not see its way to accept. Ever since the presumption was created in 1859, the period to be taken into consideration has been the 20 years immediately before the institution of the suit.

Question of period for calculating the presumption.

"It was argued, and the argument is repeated in some of the dissents, that year by year as the Permanent Settlement fades into the remote past, the presumption ceases more and more to correspond with the facts and probabilities of the day, and therefore that the presumption should run, if not from the 20 years before the passing of Act X of 1859, at least from 20 years before the passing of this Act. In other words, unless a person could show hereafter that his rent had been unchanged since 1864 he should not get the benefit of the presumption.

"This would have left the presumption operative in any case in which it could now be pleaded, but would not have allowed it to grow up by lapse of time in those cases in which it has not yet come to maturity.

"The majority of the Committee held that the presumption arising from the fact of a man holding for 20 years at an unchanged rent is in itself a wise provision of law without any reference to its dependence on the existence of the tenure or holding at the time of the Permanent Settlement, that it was in most cases easier for a zamíndár who may be expected to keep regular books to prove if rent had been changed, than for a raiyat who does not keep books to prove that it has not been changed, and that as the law had been in its present shape on the statute-book for a quarter of a century, it was inexpedient to alter. I myself voted with the minority on that occasion, but I am not anxious to see the decision of the Committee disturbed.

Decision of Committee to maintain the existing law.

"We have made some alterations in section 52, the first of which, as it only assimilates suits for diminution with suits for increase of rent on the ground of alteration of area, I need not notice; but in sub-section (2) we have inserted some provisions to guide the Courts in deciding whether an increase of area is really a ground for increase of rent or not. They will have to consider whether the apparent increase is the result of encroachment on the part of the raiyat, or of erroneous entries in the books of the landlord; whether, in short, the entire area has really been previously considered in the rent or not. The provision regarding instalments (53) is new. It has been strongly represented to us that the custom of making the rent payable in twelve monthly instalments was frequently a source of great oppression to the raiyat, as it enables his landlord to harass him with an equal number of suits for arrears. On consideration we have deemed it inexpedient to interfere with custom in regard to instalments, but where no custom or contract exists we have provided for the payment being in four equal quarterly instalments; and have, in every case, directed (section 147) that suits for arrears shall not be brought more frequently than at intervals of three months.

Increase of area.

Instalments.

"In paragraph 79 of the Statement of Objects and Reasons will be found an explanation of the provisions which the original Bill contained in regard to receipts and accounts.

Receipts and accounts.

"The main alterations introduced by the Committee are the annexure as a schedule to the Bill of forms of receipts and accounts which the Local Government will be bound to keep on sale, but which landlords may use or not at their pleasure. The Local Government will have power to vary these forms from time to time.

"If landlords prefer to use another form, we only require that it shall contain substantially the information which the receipts in the approved form provide for, and the penalty attached to non-conformity is that such a receipt shall be *presumed*, till the contrary is proved, to be an acquittance in full. By the original Bill it was *deemed* to be so.

"We do not think any more arbitrary clauses required. The greater confidence which the Courts will naturally repose in receipts kept according to the standard plan will probably be a sufficient inducement to secure their gradual adoption.

"Section 60 is new, and its object is to give an advantage to the landlord whose title is registered against a claimant who is not registered in the Collector's books.

Receipt by registered proprietors.

Deposits.

"The sections on deposits, though very carefully considered, have received but slight alteration at the hands of the Committee, and that only in matters of detail. Substantially the sub-chapter is the same as the provisions in the original Bill, explained in paragraphs 80 and 81 of the Statement of Objects and Reasons; but we have somewhat limited the discretion of the raiyat who deposits on the ground that he believes that his rent will not be received, by making this discretion dependent on the fact of the rent having been refused or a receipt withheld on a previous occasion.

Produce-rents.

"In the sections dealing with the division or appraisement of the crop, where rent is paid in kind, we have made some alterations.

"The original scheme is set forth in paragraphs 82 and 83 of the Statement of Objects and Reasons, as follows:—

Alterations made by Committee.

'82. The provisions contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Bihár by the Bihár Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issue a commission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the Commissioner is required to submit his appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.'

"The principal alterations are these. We allow the Collector to interfere on the application of a magisterial officer, should his interference be deemed necessary to prevent a breach of the peace.

"We have allowed the Collector to decide the question before him and carry out his order, only leaving it discretionary with him to refer questions to the Civil Court. We have added a section defining the tenant's rights as to the possession of the crop, its cutting, threshing and storing. The double claim to possession has given rise to much doubt and to much oppression, and it is most desirable that the right should be clearly defined.

Chapter IX.—Miscellaneous Provisions as to Landlord and Tenant.

"In Chapter IX we have made some alterations in the portion relating to improvements.

Improvements.

"We have given the Collector power (section 78) to decide disputes as to whether the landlord or tenant should have a right to make an improvement, and whether a particular work is or is not an improvement.

"We have given the non-occupancy-raiyat the absolute right to make a well which in some parts of the country is essential to his cultivation. This right carries with it a right to receive compensation for it on ejectment.

"We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (81), based on the law in force in the Central Provinces, providing that a landlord or tenant desiring to have any evidence recorded regarding an improvemnt which has been made may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also introduced a section (80) providing for the registration of improvements made by landlords. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, at a price to be fixed by the Court, any land on their estate required by them for the good of the estate, for building purposes, or for religious, educational or charitable objects. The Collector will have to certify to the sufficiency of the reason before the Court puts the section into operation.

Surrender.

"We have retained the old substantive law in regard to the raiyat's right to surrender, but we have added clauses to assist the Court in deciding under what circumstances he shall be liable for the rent of the following year in case a formal notice was not served three months before the surrender.

Abandonment.

"The object of section 87 (abandonment) is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant; on the other hand, there is the danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat.

"To meet these two dangers we provide that if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector's office, enter on the holding and let it to another tenant. We give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as he thinks fit.

Protection of third parties.

"We have also added sections directed against collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-leases in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided that the surrender of a holding which is subject to a registered encumbrance shall not be valid without the consent of the encumbrancer and the landlord, and in case of aban-

donment we have provided (section 87 (4) ) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers.

"The only other point in the chapter to which I need draw attention is that we have omitted section 141 of the original Bill, which dealt with the merger of the tenant's interests generally in those of the landlord. The section as it stood was, we thought, open to objection, inasmuch as it allowed of the occupancy-right being retained in the hands of the landlord, his tenants being thus reduced to the position of under-raiyats; but we objected to it also from a more general point of view, as enabling individuals to introduce serious complications into the tenure of property without sufficient reason. All that remains on the subject will now be found at section 22, the effect of which, stated in general terms, is that when the occupancy-right in a holding falls into the landlord's hands it ceases to exist. Merger.

"Chapter X deals with the procedure for the record of rights and settlement of rents. As the Bill originally stood these two processes were separate and were provided for in separate chapters. The Revenue-officer undertaking a record of rights had no power to settle rents nor to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries in such a record were to be presumed to be correct till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents, and the object of the Government in providing for this latter process cannot be better shown than by an extract from the Statement of Object and Reasons. It was said in paragraph 99 of that Statement: Chapter X — Record of Rights and Settlement of Rents.

'It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a table of rates will be impossible. It should be added that, in many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed. Provisions in the original Bill

'There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words an important portion of the work, after being done by those authorities who are most competent to perform it is liable to be pulled to pieces by another set of authorities, who are far less competent to perform it. The enormous amount of unnecessary expense, trouble, and vexation, which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

'The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

'(*a*) when a large proportion of the tenants or of the landlords desires that it should be applied, and

'(*b*) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlords and tenants generally.

'It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

'When the rents to be settled are rents which are subject to alteration by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

'The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained and the amount of the rent fixed or ascertained. This jamabandi will be published, and after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

'While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

'It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as *e.g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

'It only remains to add that, by section 163, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.'

"Under the scheme, therefore, as sketched out in the original Bill, it will be observed (1) that the Revenue-officer, in recording rights, could not decide any disputes which might arise, and consequently his record could be of very little value; (2) that the Settlement-officer, though he could decide whatever disputes come before him, could only deal in a preliminary

sort of way with a large class of disputes, which might afterwards be tried out by a regular suit in a Civil Court; (3) that though no settlement can in the nature of things be undertaken without the previous preparation of a record of rights, the two processes were unconnected in the Bill, and were treated as essentially separate and distinct.

Alterations made by Select Committee.

"I need not take you through the successive steps by which the procedure was altered, first in the Bill No. II of last year, a description of which will be found in paragraphs 71 to 77 of our Preliminary Report, and then in the Bill of this year as explained in paragraph 42 of our Final Report. It will be sufficient if I explain to you the final result of our discussions as embodied in the Bill now before you. First, then, we have amalgamated the two processes. It was obvious that on a Revenue-officer beginning to record rights he would find himself face to face with numerous cases in which, on one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes his record would be of little value, and it was obviously absurd to empower one officer to settle questions of status and area and then to send in another to settle questions of rent.

Two processes amalgamated.

Reasons for the change.

"It seemed equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened *de novo* and fought out from the very beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts and in the right of appeal to the highest Court in the country.

Powers of Revenue-officer.

"What we have done then has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

Special Judges and High Court to hear appeals.

"The decision of the Revenue-officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years.

Landlords empowered to apply for settlement.

"In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful.

"In sections 105 and 106 we have made ample provision for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back.

Ordinary settlements.

"All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual landlord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period.

Special settlements.

To be undertaken only with the previous sanction of the Government of India.

Divergent views as to the Settlement Chapter.

"I have dealt with this chapter at some length, because I think it is one of the most important in the Bill. The zamíndárs naturally object to it, because its operation tends, by the process of registering the rights of the raiyat, to lessen their own power of dealing with him at their pleasure, while the Bengal Government seem to look upon it as the one oasis which stands out, in the sterile wilderness of the Bill, rich with potentialities of rest and refreshment to the weary raiyat.

"I am not sure myself that the raiyats will welcome the light of day in regard to their holdings more than the zamíndárs will welcome it in regard to their rents, but I am sure that the operation of this chapter, if wisely and discreetly carried out, will ultimately tend to give greater stability to all rights in the land, to reduce litigation hereafter, to give the Government the benefit of that real knowledge of facts in regard to the relation of landlord and tenant which they now have to pick up piecemeal through the records of the Courts and the registration officers, and the deficiency of which they so much lament, and that it will prove, as we are informed the similar record has proved in the permanently-settled districts of the North-Western Provinces, 'the saving of the raiyat.' My own opinion.

"The next subject with which I ought to deal is that of the table of rates; but in our present Bill this chapter is like the more famous one on the snakes in Iceland. There is no longer a chapter on the table-of-rates. I have explained to you how special experiments have shown that only in very exceptional tracts were rates to be found so uniform as to offer any hope of the procedure being satisfactorily worked; and as a more effectual method of arriving at the same end has been provided in the settlement chapter, we have decided, with the consent of the Local Government, to apply the happy despatch to this portion of the Bill. Tables of rates. Abandoned.

"We have made some alterations in the provisions regarding *khámár* or *zirát* land. Khámár or private land.

"A reference to paragraphs 18 and 19 of the Statement of Objects and Reasons will show the intentions of Government in respect to surveying and recording *khámár* land. It must be explained that the word *khámár*, and the other words used in the Bill, have a great variety of significations, but in this Bill, as in Act X of 1859, the only distinction we wish to draw, or are in any way concerned with, is between that private land of the zamíndárs in which occupancy-rights do not accrue, and land which is not the zamíndár's private land in which they do accrue. It was to meet a very real evil, *viz.*, the tendency to absorb into the landlord's private land large areas of land in which raiyatí rights had grown up—an evil of the existence of which in Bihár there is ample evidence—that Government took power in the Bill to record and mark off for the future in specified local areas all such land as is no longer open for the acquisition of occupancy-rights. The inquiry of the past could not be undone, but in a part of the province where the wholly agricultural population is not less than 800 to the square mile, it is obviously right to prevent any further encroachments in the future to the stock of raiyatí land. We have supplemented the provisions of the original Bill by a section which allows a landlord at any time to get his private land recorded, so as to obviate the difficulty which might occur if he has to bring evidence of a past state of facts on a survey being ordered at some distant date, and we have given the tenant a converse power. Meaning of the word. Object of the provisions

"We have also given specific instructions that the Revenue-officer should record as private land all land which has been cultivated as such by the landlord for 12 years previous to the passing of the Act, and all cultivated land that he finds to be recognized as such by village-custom. In regard to other land, where local custom is insufficient to guide him, he shall look to whether the land has been leased specifically as private land in past years; but otherwise the general presumption shall be that land is not the proprietor's private land. Instructions to guide the Revenue-officer or Courts.

"Coming now to the chapter of distraint, we have maintained the principle that distraint shall not ordinarily be left to be carried out by the zamíndár's servants without the supervision of the Courts. We have by requiring it to be made on 'application' instead of on 'suit' materially reduced the expense. We have given facilities for an early application being made, and have empowered the Courts to issue in such cases an order prohibiting the removal of the produce pending the final order. Distraint.

"We have also provided that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may, by order, authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The High Court is empowered to make rules regulating this procedure.

"The alterations made in the existing procedure in rent-suits by the Bill as first introduced were explained in paragraphs 114 to 116 of the Statement of Objects and Reasons. Chapter XIII.—Judicial Procedure.

"That Statement then went on to say—

'It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it. Explanation in Statement of Objects and Reasons.

'A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and to decide against him summarily and provisionally, unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be sum-

mary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

'The truth would seem to be that facilities for recovering rents in Bengal should be sought for not so much in novel forms of procedure as in a reliable record of tenancies and their incidents and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits.'

"The Select Committee gave their most earnest consideration to the question of further simplifying the procedure, but without much success.

Changes made by Select Committee in their Intermediate Report

"In our intermediate report we explained what we had been able to do, which was as follows:—

'We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

'We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Courts Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

'For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

'We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

'We have further added a section (165) providing that when a defendant in a rent-suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

'We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

'Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.'

Questions referred to the High Court.

"In addition we referred two questions specially to the High Court—

'What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent-suits; and in particular whether it is desirable that landlords should be empowered to institute by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other

'Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a Judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.'

Reply of the Judges.

"These questions were considered and answered by the Hon'ble Judges of the Court in their collective capacity. Their answers were to the effect that the modifications already introduced were unobjectionable, but that no modifications other than those 'could be made in the ordinary law applicable to civil suits, without opening the door to evils which would outweigh the advantages to be derived from increased expedition.'

'The suggestion,' they said, 'made in the Report of the Select Committee that suits for arrears of rent should be brought by means of a single plaint against a number of raiyats holding independently of each other would, the Judges believe, be impracticable and lead to delay, worse, in all probability, than those now experienced. The Judges have carefully considered the question whether, leaving the law unaltered, any changes could be made in the executive orders issued to subordinate judicial officers with a view to expedite the decision of rent-suits. The orders at present in force seem to provide almost all that is necessary to secure the postponement of other suits to rent-suits and the prompt decision of all rent-suits which are not contested. The Court proposes, however, to direct that in future undefended rent-suits shall have priority over short suits, though both alike shall, as far as possible, be taken up on the date fixed.'

'It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (*b*) of paragraph (2), to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats who deny service of summons, but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity for applying for a re-hearing.

'The third suggestion is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. This proposal, which might, no doubt, serve to obviate some of the inconvenience, expense and delay now caused to zamindars by recalcitrant raiyats, would, however, it is believed, in many cases involve the defendants in very serious hardship. The Court is not, therefore, disposed to recommend its adoption. It may be observed further that it is always open to a zamindar to execute his decree notwithstanding that it is under appeal, in which case, if execution is stayed, the law provides that security shall be given for the due performance of the order that may ultimately be passed.

'The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them had they been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zamindars. It is, however, scarcely possible legally to facilitate the recovery of rents without

putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.'

"The Judges go on to point out that the only remedies for expense and delay are to be found in the lowering of fees and in the multiplication of Courts. On these points I am not in a position to say anything here, save that, while I have no doubt that the latter question will be fully considered by His Honour the Lieutenant-Governor, the former, in connection with the scale of court-fees generally, is now under the consideration of the Government of India. Further proposals made by Babu Mohini Mohun Roy with the object of shortening the procedure have since been considered by us. They were referred to a number of experienced judicial officers, but were not favourably received. It seems quite clear that no remedy is to be found either by summary procedure, by making returns of service conclusive evidence of actual service of process, by restrictions on the right of re-trial, or by any similar method. Rent-suits are tedious and expensive, because the issues to be tried are often intricate, and because facts are hard to be got at. With rights and rents recorded, with receipts and accounts properly kept, and above all with trustworthy agents, the zamíndárs would find many of these difficulties vanish. But if there is a real dispute a summary trial will not help. It only means that the real trial of the question at issue is postponed and there are two processes instead of one. I am afraid the Judges touched the heart of the matter when they said: 'It is scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.' I have dealt at some length on this subject and been careful to give the opinion of the High Court, because it is made a ground of reproach to us that we have not given any more summary method of recovering rents. I regret that we have not been able to go further. We have rejected no suggestion having any element of success in it without first obtaining the concurrence of the most competent judicial officers, and we have in addition to those abbreviations already mentioned added some more in the chapter about sales for arrears which I hope will prove useful.

Remedies proposed by the Judges

Suggestions by Babu Mohini Mohun Roy.

"The general scheme of the Sale-chapter was very fully explained in paragraphs 124-132 of the Statement of Objects and Reasons, and as we have not departed from the general scheme I will not go over the whole ground again, but merely explain the slight modifications of detail which we have ventured to introduce. We have included among 'protected' interests, that is to say those which cannot be voided by the purchaser, the right of a non-occupancy-raiyat to hold for five years at the rent fixed by a Court.

Sales for arrears.

"We have removed the limitation which restricted the decree-holder's right to get arrear-rents out of the purchase-money to such rent only as might be due for six months after the date of decree. It is not in the interest of either party to penalise the landlord's forbearance in abstaining from executing his decree.

"We have, in order to shorten proceedings, inserted in section 163 a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

"We have, at the suggestion of our hon'ble colleague, Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. on the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold; and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

New section for repurchase of holding on payment of arrears and interest.

"Having decided that no alteration should be made by this Bill in the existing law relating to the incidents of the patni tenure, we have consequently excluded those sections which dealt with the sale procedure applicable to those and similar tenures. It will be for the Government of Bengal to deal with the question of making this procedure applicable to the summary sale of other tenures which may be registered under the Bill now before the Lieutenant-Governor's Council.

Patni sales.

"I have a few remarks to make on Chapter XV, which brings together in one focus all the provisions we think it necessary to make in limitation of contract. The necessity of interfering with freedom of contract was fully discussed at the second reading of the Bill, and was then affirmed by the Council. I shall not therefore further discuss this question. I shall only deal with our alterations, and, first, I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limitations into three classes, the first one referring to all contracts whether past or future, the second to quite recent contracts, the third to future contracts only. In the first class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy-rights, to destroy occupancy-rights already in existence, to allow ejectment without process of law, to prohibit improvements. The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third class, which only restricts future contracts, we have simply put in legal form the general statement

Contract sections.

Division into three classes First class.

Second class.

Third class.

that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Reclamation leases.

"We have left reclamation leases wholly to contract, save that we do not allow them to operate so as to destroy an occupancy-right which has grown up during the lease.

Chur and utbundi.

"We have put *chur* lands and *utbundi* lands on a special footing, which is practically the same as that of the ordinary raiyat under Act X of 1859. No occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever amount may be agreed upon between him and his landlord. We have omitted the chapter in the original Bill relating to *bastu* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land when not held as part of the holding shall be dealt with according to local usage; and when local usage cannot be ascertained, then it shall be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places.

Bastu

Supplemental Chapter.

"There are two alterations only in the Supplemental chapter which need be noticed. One is that when a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

"The other provides that 'this Act shall be read subject to any Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.' In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

Bill finished. Further remarks.

"I have now gone through all the more important changes which have been made in the Bill since it came into the hands of the Select Committee, and have endeavoured to put you in full possession of the considerations by which we have been influenced. In performing this task I am well aware of the intolerable tediousness I must have inflicted on you, but I must still ask your patience for a little time while I offer some remarks as to the value which should be attached to the two opposing lines on which the minutes of dissenting members proceed, and the real amount of protection given to the raiyat by the labours of the Select Committee.

Three classes of dissents.

"Turning now to the dissents, we found that they may be broadly divided into three classes: (1) those which object only to a few specific provisions of the Bill; (2) those which, accepting the Bill as a whole, express dissatisfaction at the insufficiency of the protection given to the raiyat; (3) those which object to the whole scope of the Bill as injurious to the interests of the zamíndár.

Specific proposals.

"It is not my purpose here to deal with objections to specific clauses of the Bill. The more important have been noticed already; the less important can best be reserved till the specific amendments on them are brought before the Council.

Insufficient protection to raiyat.

"I wish, however, to say a few words on those objections which are directed against the general scope of the Bill. It was not to be expected that a Bill of such importance and complexity as this—a Bill which has to deal with absolutely conflicting interests, which purports to set limit on the power of one class to absorb the fruits of the industry of another class, and which has to regulate their relations in regard to the two leading interests of property and power—it was not to be expected that such a Bill could meet with universal acceptance or could fail to give cause of offence to those who on either side take extreme views. There are some who, if their views were carefully analysed, would see in the raiyat nothing but a serf, who look upon his rights as only interests carved out of the landlord's absolute property in the soil, and as being therefore entirely dependant on the landlord's will and pleasure. There are others who look upon the raiyat as having the true property in the soil, and the landlord only as the tax-collector for the State, as one therefore who should have no more part in settling what that tax is to be or from whom it should be taken than a collector of any other State assessment. Between these two extreme points there are many halting-places, and the dissents show that, while some of our members would have guided us some way towards the latter point, others would have had us adopt the high landlord view of the position and look mainly if not solely to his interests. The dissents are naturally coloured by the dominant idea in the mind of either party, and will, I think, to some extent have the effect of neutralising each other in the public mind. What I would ask the Council to consider is, whether it is true that in the words of one party we have 'signally failed to afford the occupancy-raiyat reasonable protection,' and as regards the non-occupancy-raiyat 'have neither given protection as regards his rent nor facilitated his acquisition of the right of occupancy'—whether it is true, in the words of the other party, that the 'measure is opposed to the just rights of the proprietors of the land and detrimental to the best interests of the country.'

Position of the occupancy-raiyat,

"Let us compare briefly the position of the raiyat under the old law and under the Bill as it stands.

Under the existing law,

"Under the existing law the position of the occupancy-raiyat may be thus described. In the first place, he has a great difficulty in making good his title to occupancy-rights. He must prove that he has held every particular field of his holding for 12 consecutive years, and in the absence of trustworthy village-records the proof is often impossible. He and his forefathers may have resided in the village for generations, but evidence of this is entirely immaterial to the issue. He may be able to show that he has held *some* land in the village in

every year of the last 12, but if the fields have been changed his claim to the occupancy-right cannot be maintained. *Secondly*, the law, not content with making the proof of occupancy-rights very difficult to the raiyat, allows him to contract himself out of them, and these engagements, entered into without understanding and forced on the raiyat without adequate consideration, are rapidly becoming a common form. *Thirldy*, the law gives the occupancy-raiyat no protection from incessant enhancement. It enumerates, it is true, the grounds on which enhancements may be sought, but it does not prescribe the term for which a rent after enhancement is to hold good, and it does not prevent a landlord from instituting annual enhancement-suits, or from annually serving the raiyat with a demand for an enhanced rent. *Fourthly*, the law does not define the raiyat's right to make improvements, even of the most ordinary and necessary character, nor does it determine his rights in them in the event of his being ejected. *Fifthly*, the law makes every instalment an arrear of rent that is not paid on the exact date fixed in the raiyat's engagement or by custom, and allows a landlord to institute a separate suit for each instalment in arrear. As the custom of monthly instalments is common, the harassment which a landlord may thus inflict on his raiyat is intolerable. *Sixthly*, the law makes the raiyat liable to be ejected in execution of a decree for an arrear of rent, even though the sale of his occupancy-right by auction would more than satisfy the debt. Thus he loses, and the landlord acquires, not only the value of his interest in the land, but also of any improvements he may have made, and of any crops which may be still on the ground. *Seventhly*, the law of distraint is such that under cover of it landlords are able, if so disposed, to exercise a ruinous interference with the raiyat's disposition of his crops and reduce him to beggary.

and under the Bill.

"To turn to the corresponding provisions of the Bill. *First*, the Bill, by returning to the old principle of the khudkhast raiyat, gives him his occupancy-right not only in the actual lands held for 12 years, but in any land held by him in the village, and it meets the great blot of the old law by facilitating his proof of these rights. He has merely to show that he has held *some* land continuously within the village boundaries for 12 years, and he becomes a settled raiyat of his village. It is presumed in his favour, in any proceeding between himself and his landlord, that in the absence of proof to the contrary he is an occupancy-raiyat of the land which he is found to be holding. This presumption, which cannot operate unjustly to the zamíndár, is very rightly thought to be of immense value to the raiyat.

"*Secondly*, the Bill prevents the occupancy-raiyat from contracting himself out of his status.

"*Thirdly*, the Bill puts an effectual check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case the Bill says that it shall not be again enhanced for fifteen years. The Bill also puts a strict limit to the amount of enhancement by agreement, and that this protection is considered of real value by the dissentients is shown by the importance they have attached to it. The changes made in the grounds of enhancement in Court have already been discussed. The only change that is in any way likely to prove prejudicial to the raiyat is the enhancement on the ground of a rise in prices, and that not because it is unfair, but because it is workable, while the old law was admittedly impracticable. Even this concession the landlords profess to regard as 'visionary.'

"*Fourthly*, the Bill secures to the occupancy-raiyat power to make improvements and enables him to recover his outlay in case of eviction.

"*Fifthly*, in the matter of rent instalments, the Bill, while leaving the number and dates of instalments to agreement or local usage, provides that an interval of at least three months shall intervene between the institution of successive suits for arrears of rent.

"*Sixthly*, the Bill abolishes ejectment in execution of a decree for an arrear of rent against an occupancy-raiyat, and requires the decree-holder to bring the tenancy to sale.

"*Seventhly*, the Bill has effectually weakened the power of the landlord to use the process of distraint for purposes of simple oppression, though it remains a valuable instrument for the recovery of arrears.

"I say confidently that on all these points the Bill is an improvement on the old law, and, without any injustice to the landlord, fulfils the object of the Government, which was 'to give reasonable security to the tenant in the occupation and enjoyment of his land.'

The non-occupancy-raiyat.

"To pass now to the non-occupancy-raiyat. I have already, with reference to Chapter VI, gone so fully into a comparison of his position under the Bill with that under the old law, that I need not take you over the ground grain; but admitting that a certain amount of peril lies in the power of a landlord to eject him at the expiry of his initial lease when he is first admitted under a registered lease, and when the landlord sues within six months of its expiry, I would ask you to look at the effect of our provisions as a whole. The raiyat can, under the above circumstances, be ejected, but otherwise he cannot be. If the landlord wishes to enhance his rent, he can only do so by a registered agreement or by suit in Court. The raiyat is not to be ejected for refusing an enhancement, but the Court will fix a fair rent and he can hold on at this rent for five years. He cannot contract himself out of the right to acquire occupancy-rights. The Bill allows the period during which he holds under a lease and the period during which he holds at a judicially fixed rent to count towards the accrual of occupancy-rights; and yet we are told that all these things are vain. Neither in the necessity of registering initial agreements and agreements of enhancement, nor in the right to sit on unless ejected by suit within six months of the expiry of the initial lease, nor in the right to a judicially fixed rent with its period of five years, neither in any of these things nor in all of them put together is any protection afforded to the non-occupancy-raiyat nor is anything done to facilitate his

acquisition of the right of occupancy. I leave it to you, gentlemen, to decide what weight should be attributed to accusations such as these.

Landlords' objections.

"Coming now to the objections taken by the landlords, it is more difficult to formulate these, for they deal apparently with more than half the sections of the Bill and must be considered with reference rather to specific clauses than with the general scope of the Bill. The general accusation which I have quoted woulds cem to have been intended to refer to a Bill which still enforced the transferability of occupancy-rights, the extension of that right to the estate as well as to the village, the gross produce limit, the limitations on initial rents, the fractional limitations on enhancement in Court, the avoidance of all past contracts not in accordance with the Bill. I find no allusion made anywhere to the fact of these provisions having been struck out. I find no allusion to the simplification of the method of enhancement on the ground of rise in prices except that what Mr. Reynolds speaks of as a provision that 'puts enormous powers of enhancement into the hands of the landlord' is sneered at by Bábú Peári Mohan Mukerji as more visionary than real. I can only say that we have endeavoured, and I think have succeeded in our endeavour, to give great facilities for moderate enhancement, and have striven, as far as was possible without injuring the rights of others, 'to give reasonable facilities to the landlord for the settlement and recovery of his rent.' The Council will, I think, easily understand from the general scope of my remarks and from the resistance we have offered to many proposals supported by all the ability and all the authority of the Bengal Government, that we have not lost sight of the just interests of the landlord, and I hope to be able to prove this with regard to the long series of amendments which it is proposed to move on specific section. There is one complaint made by the representatives of the zamíndárs, and in a modified form by Mr. Hunter, on which I should like to say a few words. The complaint is that the Committee did not examine witnesses personally. Mr. Hunter sees very clearly that it was not possible for the Select Committee to do this, but regrets that the Rent Commission did not adopt the method—a method which, in enquiries of quite another scope, and, indeed, recently under the hon'ble gentleman's own auspices, has worked most successfully. Well! I am not acquainted with the reasons which induced the Rent Committee to forego this method. My own connexion with the Bill, and my official knowledge of the discussion, indeed, date from a much later time, only from the receipt of the Secretary of State's despatch sanctioning legislation; but I can quite understand that the Rent Commission did not act without good reason. Those who can recollect the agitation caused by the Indigo Commission of a quarter of a century ago may well have thought it dangerous to start an agitation on the infinitely more important question of rent by a peripatetic Commission of Enquiry. They may well have thought that more light would be thrown upon the problem by the opinions and knowledge of the judicial and executive officers, whose business it is to enquire daily into the relations of individual landlords and tenants, than by collecting evidence which, on the side of the rich and powerful, would be forthcoming in abundance, and would be put before them with all possible skill and ability, while on the part of the poorer and humbler side it would be no one's business to collect it, nor could it, in the shape of personal knowledge, be got at save with infinite trouble and at some peril to the witness.

Personal examination of witnesses.

Probable reasons of the Rent Commission for foregoing this method.

"These and other similar considerations may have led them to prefer the method they adopted to that of a Commission going about to take evidence. I am not concerned to discuss the question whether they were right or wrong, for there is very much to be said on the other side; it is sufficient to point out that, when the legislature had once decided the general lines on which we were to proceed, it was no longer open to the Select Committee to adopt this method. Such a course is neither usual nor desirable. In fact the whole constitution of Select Committees of this Council renders it impracticable for them to go about the country collecting evidence. In what we did, however, we adopted, I think, an equally efficacious method. We have, during the past two years, submitted every section of the Bill twice over to the most thorough sifting at the hands not only of persons interested, but of experienced and impartial officers, judicial and executive, and to Committees which could test the experience and opinions of one officer by confronting them with the experience and opinions of another officer; and if the result has been a great variety of opinions, it is not merely because human nature is so constituted that opinions must differ on questions involving most important and antagonistic interest—questions in which the everlasting debate between old and new, between those who have and those who have not, must come to the front, but also because the facts themselves differ so widely; the facts of one estate are not the facts of another estate; the facts of one part of the country are not the facts of another part of the country. It is one of the misfortunes of legislation that in this country as well as in others, but more in this country perhaps than elsewhere, we have to make our laws applicable to a number of heterogeneous units of area and population, united together only by one common Government. We have to legislate in the interest of the average, and to neglect what is local and exceptional. This leads no doubt to difficulties. We have to insert some provisions which, in parts of the country, are not wanted; we have to omit other provisions which, in some parts of the country, are certainly desirable. Accepting this as the necessity of our position, not only have we endeavoured to get the fullest measure of light and knowledge to bear on our deliberations, we have also endeavoured to guide ourselves by that light and knowledge. We have given time—ample, abundant and overflowing—for the elaboration of criticisms and for the collection of opinions, and the criticisms and opinions so collected and elaborated have been carefully and laboriously digested. The amount of literature that has gathered round this subject is such that no one except under the sternest sense of duty could possibly read, much less assimilate, it, and it really leaves nothing new to be said on any point in this wilderness of controversy.

Such a course not open to the Select Committee.

Method adopted by the Committee.

Reason of great variety of opinions.

Difficulty of legislating for the whole of Bengal

"The Bill was before the public in one shape or another for three years before it was introduced into this Council, and during the two years it has been before the Select Committee every section has been discussed and re-discussed from every possible point of view. I can safely say that never has a Bill been introduced into this Council which has had so much thought and consideration expended upon it by the outside public. There is really a ghastly irony in the accusation that we are now giving no time for consideration and are asking you to pass the Bill with undue and indecent haste; I am unwilling to look upon such an accusation as made in a malicious spirit, but it is really difficult to suppose that any one can attach serious credence to it. I can understand the advocates of the zamíndárs wishing to drop the Bill altogether. I can understand, though I cannot sympathise with, those advocates of the raiyats who would see this Bill abandoned in the hope that this may necessitate a more drastic measure being passed hereafter; but what I do not understand is, how any one, who regards public and not personal interests, can wish that a growing agitation should be inflamed, and that dangerous passions should be further exaggerated, by a renewed and useless discussion of matters which further discussion cannot possibly further illumine. Yet this is, I understand, the recommendation made by the representatives of the zamíndárs. In fact, what I am now saying is really addressed to what is practically the first disputed question for the Council to decide. You have to consider whether this Bill should be re-published with a view to a fresh collection of opinions, involving a fresh consideration by the Select Committee, and the hanging up of the whole subject for another year, when precisely the same tactics would be repeated. I would answer that there must be some point of finality in all this discussion. The whole scope of the work of the Select Committee, since the Bill was last re-published, has been to prune excrescences and to cut away novelties. Our alterations during this session have not been such as to insert any novel provisions of serious importance into the Bill, nor such as to offer material for discussion outside the well-worn lines. We have ample evidence from various parts of the country—from Maimansingh in the east to Bihar in the west, from Rangpur in the north to Orissa in the south—that the agitation on this subject cannot safely be prolonged, and that whatever is done in regard to the Bill should be done finally and at once. I believe I shall have the support of His Honour the Lieutenant-Governor in saying that it would, in his opinion, be seriously injurious to the interests of the province if legislation is now postponed, and I have no hesitation therefore in asking you to reject the amendment that the Bill should be re-published, and to decide on proceeding at once with the consideration of our Report and of those amendments of which notice has been given."

The Hon'ble Mr. Quinton said:—"The impressive words with which my hon'ble friend Sir Steuart Bayley has just concluded his speech may, I think, notwithstanding the plea for delay put forward by my hon'ble friend Bábú Peári Mohan Mukerji in the first amendment standing in his name, justify us in congratulating ourselves on at last approaching the end of this long controversy, and on reaching the final stages of the Bill, which has been under the consideration of the Select Committee for the past two years.

"My hon'ble friend Sir Steuart Bayley has, on the part of the Government of India, acknowledged our services in generous terms, and whatever may prove to be the value of those services I am sure that not one of us failed to appreciate the gravity of the work on which we were engaged, and the momentous results that must follow on our recommendations; for the task which this Council has undertaken, and on which we were required to advise it, namely, the revision and amendment of the Statute-law respecting the rights and interests of landlords and tenants in Bengal, is certainly second in importance to no measure which has come before it during the present generation. That law affects vitally the interests, the well-being, even the very means of subsistence, of a population of 60 millions of people, for the bulk of whom agriculture furnishes the sole means of support. With such a law, when it works well on the whole, no wise Government would interfere; but when it has been found mischievous in its operation, when it has been left behind by the progress of het agricultural classes, or has ceased to be applicable owing to altered economic conditions, then it is the duty of the Government to step in, and to bring the law into accordance with the requirements of the time. In fulfilment of this duty the Bill was introduced, and referred to the Select Committee, whose report, now on the table, we are, I hope, about to take into consideration. That report expresses the opinion of only a majority of the Committee on the points with which it deals. It was not to be expected that unanimity should prevail respecting a measure purporting to regulate questions so numerous, so delicate and so important, among members holding such antagonistic views as those entertained by extreme partisans on the side of the landlords and of the tenants. It was hopeless to think that those who considered that the tenantry throughout Bengal and Bihár were living in such a state of contentment and prosperity that any attempt to amend their condition by law was altogether uncalled for could be brought to agree on provisions for that purpose with others who believed that a diametrically opposite state of things existed, that the condition of the peasantry in many parts of the provinces was deplorable, and that the defects and abuses of the law by which this has been allowed and encouraged called for a speedy and drastic remedy.

"The reports and opinions elicited by the publication of the Bill, as introduced in 1883, and as revised in 1884, furnished the Select Committee with very valuable materials, in addition to those already accumulated, for deciding on the various contested questions, and the result has been a report with which neither party is fully satisfied. This dissatisfaction has been forcibly expressed in the recorded dissents, some of which blame us for what we have done, while others find fault with us for what we have left undone. Some censure us for needlessly and recklessly interfering with the existing state of things, others for having

stopped far short of what was necessary to correct its evils. These contradictory animadversions raise a strong presumption that the majority of the Committee has avoided extreme measures on either side, and has turned a deaf ear to the songs of the sirens that, often with more vociferation than melody, attempted to lure us from what will, I hope, be found to be the course of prudence and of safety.

"Nor can this moderation be justly condemned so long as it effects the essential objects of the Bill. If there is one point more than another with which we have been impressed in the course of our deliberations, it is that the Government of Bengal is far behind other Governments and Administrations in the possession of accurate information respecting the condition and relations of the agricultural community. The existence of the Permanent Settlement relieved that Government from the necessity in its own pecuniary interest of making a record-of-rights in land—a measure the importance of which was realised at an early period in those provinces where settlements of land-revenue recurred at periodical intervals; and the mode of collecting the revenue by the single process of selling the defaulting estate at head-quarters deprived it of an agency in the interior of the districts, charged with the duty of making itself and its principals thoroughly acquainted with the landed classes, and all facts bearing on their condition. This being so, we felt that we were travelling along a somewhat dark road, and that a safe arrival at our destination was not likely to be achieved by rapid driving. The revised Bill undoubtedly does not go as far in the direction of tenant-right in its broadest sense as the Bill originally introduced, but it provides, I believe, adequate remedies for evils the existence of which is undoubted. It strengthens the defences of the raiyat at points which have proved to be weak; it does not provide him, at the expense of the landlord and possibly to his own destruction, with torpedoes to ward off attacks which there are no good grounds for anticipating.

"My hon'ble friend Sir Steuart Bayley has explained clearly and at length the changes we have made in the Bill as introduced, and the reasons which led us to make them. I shall not, therefore, weary the Council or prolong what is likely to be a protracted debate by following him step by step over the same ground. The importance of the provisions respecting the occupancy-right will however justify my dwelling on them for a short time even at the risk of repeating in feebler language what has been said about them by my hon'ble friend; and in what I shall say I have in mind the objections of those who think we have done too little for the raiyat rather than of those who consider that we have done too much. My hon'ble friend the Mahárájá, who is to speak after me, will, no doubt, put this last class of objections as strongly as they can be urged, and I have equally little doubt that the most of the speakers who have to follow him will fully answer his objections on this score.

"The land of Bengal is divided into 110,456 estates, owned by about 130,000 proprietors; subordinate to these proprietors come a body of middlemen whose numbers can be only guessed at; they are probably about a million. Lastly, there are 10 millions of raiyats. Of these last, occupancy-raiyats form by far the most numerous and important class. About their numbers also there is much uncertainty; the lowest estimate I have seen puts them at 60 and the highest at 90 per cent. of the whole number of raiyats, and, being the permanent agency by which the cultivation of the soil is carried on, they are the backbone of the agricultural organism of the country. It is clear from this that the provisions respecting them will have effects far more wide-reaching than those relating to the other classes of the agricultural population, and that if we have failed in adequately protecting the rights essential to their welfare, we have failed in the most important portion of the duty laid upon us. To show that we cannot justly be reproached with such failure I shall, following the example set by my hon'ble friend, ask you again to consider how the Bill found the occupancy-raiyat and how it has left him.

"The constituent elements of a tenant-right theoretically perfect are fixity of tenure, fair rent and free sale—the three F's. I need not enter upon an economical dissertation on the relative importance and value of these three principles. My hon'ble colleagues are probably much better able to instruct me than I them on the subject. We had, however, to consider in Select Committee to what extent these principles should be given effect to in our provisions respecting occupancy-raiyats.

"After long discussions and some fluctuations of opinion we came by different roads to the conclusion that in respect of free sale—or the power of transfer—the law with one exception, to which I shall allude more fully when dealing with fixity of tenure, should be left as it is. We were fully conscious of the stimulus to enterprise and improvement of the land which the power of raising money on the mortgage of his holding might give to a frugal and industrious tenant, but when we came to apply the principle generally, we found the risks attendant on suddenly enlarging in this way the credit of a weak and impoverished tenantry like that of Bíhár so great, and the difficulties in other localities of conceding to the landlords a veto upon the practice without strangling a healthy and rapidly-growing custom which is, we believe, of great public benefit to be so insuperable, that we determine to follow the cautious advice of the Famine Commissioners, and allow the right to be governed as at present by local custom.

"Those gentlemen write as follows on the subject of transfer in Bengal:—

'Though on the whole we regard the general concession of the power of sale of those* rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by law, and where it has not, it may be questioned whether the law should move in the advance of the feelings and wishes of the people.'

* *i.e.*, occupancy

"Article 41 of Mr. Justice Field's Digest states that under the existing law the holding of an occupancy-tenant is transferable by custom, and that in such cases no registration in the landlord's sherista is necessary. We, by section 183 of the Bill, expressly save customs, usages or customary rights not inconsistent with the Act, and by an illustration to that section call attention to its effect on the usage of transferring occupancy-holdings without the landlord's consent. My hon'ble friend Mr. Amír Alí has, I observe, an amendment on the paper proposing that we should go much further in this direction than we have done. The discussion on this will give an opportunity for a fuller statement of the reasons which actuated us than I need now trouble Council with. So far as regards free sale we have left the position of the occupancy-raiyat unchanged.

"Under Acts L of 1839 and VIII of 1869, a raiyat who claimed occupancy-right in any land was obliged to prove that he had held that land for 12 consecutive years immediately before the dispute arose. The unexpected effect of this provision was to make the acquisition of the status depend upon the will of the landlord, who had merely to shift the tenant about from one field to another, or, simpler still, to have the patwárí's papers, which were the chief evidence the Courts had to go upon, manipulated so as to show a change in the tenant of the holding or of some of its constituent fields. By either of these measures he might prevent the accrual of the occupancy-right, or defeat it when it had accrued. The Bill renders these methods of getting round the intention of the law, if not impossible, at least a matter of great difficulty. Occupancy-right will henceforward depend, not on the holding of any particular land for 12 years, but on holding as a raiyat for that period any land in the village in which the right is claimed. To prevent the accrual of the right the landlord must turn the raiyat out of the village altogether—a much stronger measure and probably more unprofitable than shifting him about from field to field within the village; while, on the other hand, the raiyat will find it much easier to prove that he has held some land in the village for 12 years than that he held the same land for that period. The same reasoning applies to the falsification of the patwárí's papers. Such falsification will now be made more difficult to effect and more easy to detect. All raiyats are practically declared to be possessed of the occupancy-right in their holdings whose tenure of any land in the village as a raiyat has lasted for 12 years from the 2nd of March, 1871, or any subsequent date; so that no amount of shifting within the village will now avail to extinguish the raiyat's occupancy-right in land held by him, and no tampering with village-papers short of omitting the raiyat's name altogether will be effective for the same object.

"Besides this we provide further that all raiyats holding land shall in case of dispute be presumed until the contrary is proved to have held all or part of it for 12 years—a presumption of which the raiyat has not hitherto had the benefit, though it is, in our opinion, based upon existing facts.

"Again under the present law, occupancy-rights could not be acquired in land known in different parts of the country as sír, zírát and khámár. We have reason to believe that in many localities this reserved area has been unjustly and illegally extended to the injury of the raiyats. We have laid down strict rules for the guidance of the Courts in determining what is khámár or zírát, and have stopped the growth, after the passing of the Act, of the area in which raiyats are debarred from acquiring rights of occupancy.

"These provisions constitute a great advance upon Act X of 1859, and facilitate the acquisition of the occupancy-right far beyond the present law. I shall not anticipate the discussion on the amendment of my hon'ble friend Mr. Reynolds, by alluding to the still greater facilities which the addition of the word 'estate' to sections 20 and 21 would afford. I hope I have shown that even if that amendment be not accepted the gain to the tenant from the provisions of the sections as they stand is very great.

"Act X of 1859 left it open to a landlord and tenant to defeat the accrual of the occupancy-right or to extinguish it when it had accrued by written contracts. The mischievous effects of this have been so fully explained to Council both to-day and on previous occasions when the Bill was under debate that I need not now dilate upon them. Suffice it to say that we have in express terms declared to be null and void contracts of this nature, whether made in the past or in the future. The law will no longer give effect to contracts whereby a helpless tenant signs away his legal rights at the dictation of a powerful and unscrupulous landlord.

"The existing law allowed of the ejectment of an occupancy-raiyat from his holding if the amount of a decree against him for arrears of rent was not paid within 15 days. This provision furnished landlords with a ready weapon for destroying the occupancy-right. It gave them a direct interest in dealing oppressively with their tenantry, and it has not been everywhere allowed to remain a dead letter. The Bill puts an end to all this. It recognises the principle that the occupancy-raiyat has a valuable interest in his holding which the landlord cannot be allowed to confiscate, by enacting that an occupancy-raiyat shall not be liable to ejectment for arrears of rent, but that his holding shall be liable to sale in execution of a decree for such arrears, and that the rent shall be a first charge on the holding. The interest of the tenant will thus be saved from forfeiture when he is unable, from calamities of season or other misfortune, to meet his lanlord's demands, and he will obtain so much of the market-value of it as remains after the claim for rent has been fully satisfied.

"Here also we considered that the tenant should be debarred from contracting himself out of his rights, and we have provided that no contract, whether before or after the passing of the Act, shall entitle a landlord to eject a raiyat otherwise than in accordance with the provisions of the Act.

"In close connexion with the point on which I have been dwelling is the legal power conferred upon the tenant in Bengal for the first time by this Bill of making improvements on his holding and of being recouped for such improvements when ejected by the landlord in the shape of compensation, or when his holding is sold in execution of decree or otherwise, by the enhanced price paid for the value added to the holding. This principle of compensation for tenants' improvements was adopted in Oudh in 1868, in the North-Western Provinces in 1873, and the extension of it to Bengal by the present Bill adds a strong bulwark to fixity of tenure for the occupancy-raiyat in that province. Taken with the other provisions respecting this element of tenant-right, to which I have been calling the attention of Council, it will place the Bengal occupancy-raiyat in a better position as regards fixity of tenure than that held by the corresponding class of cultivators in any other province of British India.

"I now turn to the question of enhancement, which is of no less importance. Fixity of tenure alone is of little use so long as the rent at which the tenant holds can be frequently and capriciously enhanced; on the other hand, nothing affords a stronger screw for squeezing successive enhancements out of a tenant than the arbitrary power of ejectment. An occupancy-tenant will under the threat of ejectment from his holding—generally the sole means of support for himself and his family—agree to enhancements which, at first small, gradually raise the rent to an amount which leaves him the minimum sufficient to subsist on. The two rights hang together and re-act on each other.

"By giving greater fixity of tenure we have restricted the landlord's power to exact capricious enhancements, and our next duty was to regulate the powers of enhancement directly conferred on him by law. These were two fold—enhancement by contract and enhancement by suit. The present law places no restriction on enhancement by contract. This was a point on which the Local Government laid very great stress, and at their instance we have provided that all contracts for the enhancement of rent must be registered, that the enhancement is not to exceed the previous rent by more than two annas in the rupee, or 12½ per cent., and that the rent is to be fixed for the same term as is fixed in case of enhancements by suit.

"The provisions of Act X of 1859 relating to enhancement by suit, according to the admissions of the tenant's friends and the complaints of his enemies, have proved for the most part unworkable—a state of things which my hon'ble friend Mr. Reynolds has described as a public scandal. If the law recognises the landlord's right to enhance, it should certainly not attach to that right conditions which render the exercise of it impossible. My hon'ble friend Sir Steuart Bayley has explained fully the alterations we have made with the object of removing this defect in the present law, and I shall confine myself to showing how far we have endeavoured to provide that the increased facilities for enhancement afforded by the Bill shall not operate unfairly or oppressively as regards the raiyat.

"At starting I may observe generally that the easier enhancement by due process of law is made for the landlord, the less inducement he will have to resort to irregular and oppessive methods for securing the same end—a result of no small gain to the tenant when we find in some localities rents doubled by irregular enhancements in 16 years, and raised 500 per cent. by the same means in some estate within a comparatively recent period.

"The first of the grounds on which enhancement is authorized by the present law is 'the prevailing rate.' This ground I should gladly have seen omitted from the Bill. It appeared to me that, looking to the impossibility of now discovering a pargana rate in most parts of the two provinces, and considering the abuses which have been proved to have attended the working of this ground of enhancement and the greater facilities afforded to the landlords for enhancements on other grounds, they would have had no just cause of complaint if this had been abolished. The question, however, was decided otherwise by the Select Committee, and their decision has been accepted by the Executive Government. But while so deciding they felt that some attempt should be made to prevent the possibility of the manufacture of bogus rates to be used as a lever for raising rents all round: and have laid down a rule, to be found in section 31, which will, we hope, be effective for this end. My hon'ble friend Mr. Reynolds has an amendment on the paper which he considers will be much more effective for the same purpose. Both the section and the amendment agree in providing that there must be a substantial difference between the rent sought to be enhanced and the prevailing rate, and that the prevailing rate is to be ascertained with reference to what has been actually paid for not less than three years, and both enable the tenant to show as a bar to enhancement that there is a sufficient reason for his holding at such an exceptionally low rate. Thus, whether the amendment be accepted or not, the tenant who has been allowed to hold at a low rate for special reasons will be protected from enhancement; only rents which are substantially below the prevailing rate will be enhanced, and the prevailing rate must be not a bogus rate, but one actually paid for such a period as will be a guarantee for its *bonâ fide* character.

"The section also provides for an enquiry by a Revenue-officer as to the prevailing rate if the Court cannot otherwise ascertain it satisfactorily. I need scarcely point out to the Council that the facts are more likely to be elicited by such an enquiry than by the evidence of witnesses whom the contending parties bring forward.

"I cannot understand how these provisions can be objected to as being but feeble checks on the abuses which have hitherto attended the working of the prevailing rate as a ground of enhancement. The omission of them and the retention of the prevailing rate in its present form would, in my mind, be much more disadvantageous to the raiyat.

"The next ground of enhancement, namely, a rise in the average local prices of staple food-crops during the currency of the present rent, has been substituted for a rise in the value

of the produce of the land for which enhanced rent is claimed. The reasons which led to the change have been fully explained by my hon'ble friend Sir Steuart Bayley. The landlords complained that the law in this respect had become a dead-letter from the difficulty of working the rule of proportion laid down in the great rent case, and to meet this complaint, which appeared to be well-grounded, the present scheme was devised. The Select Committee believed it to be sound in principle, and considered that they could guard against its operating to the injury of the tenant by the special provision which gave an enhancement in proportion, not to the whole rise of prices, but only to two-thirds of such rise, thus allowing a deduction of one-third to cover increased cost of cultivation, and still more by the general rule, to which I shall allude hereafter, by which enhancements on all grounds are to be qualified.

"The change has not given satisfaction to either party, and I see that my hon'ble friend Bábú Peári Mohan Mukerji has placed on the paper an amendment proposing to revert to the old ground of enhancement which formerly proved so ineffective. If the old rule in all its clumsiness be restored at the request of the landlords, the advocates of the tenants will no doubt rejoice, and the landlords must expect little sympathy with future complaints as to the rule of their choice being unworkable. If the scheme of the Bill be retained, the tenant gets the benefits of the limitations to it which I have above referred to.

"Next, enhancement is allowed by suit on the ground of landlords' improvements, the justice of which cannot be gainsaid. Under the existing law this ground of enhancement, from the difficulty of proving the making and value of the improvements, must have operated unfairly to both parties. On one hand, it threw obstacles in the way of a landlord establishing his rights to enhancement, on the other it held out inducements to the fabrication and production of false evidence in support of claims which the raiyat as the weaker of the two parties could not always resist. The provisions of the Bill respecting the registration of landlords' improvements, and as to the considerations which are to guide the Courts in determining the value of the improvement to the tenant, will prevent enhancements being made for improvements which are not *bonâ fide* and which do not add to the value of the tenant's holding. No enhancement can be successfully claimed for an improvement which is not registered, and which does not increase the productive powers of the land; and in determining the amount of the enhancement, the Court must have regard to the cost of the improvement, so as not to give the landlord an inordinate increase of rent for what cost him but little, to the cost to the cultivator required for utilizing it, to the existing rent, and to the ability of the land to bear a higher rent.

"Lastly, comes the ground of enhancement on account of increase in the productive powers of the land due to fluvial action. This is a modification of the existing law, which contains no qualification as to the cause which gives rise to the increase in productive powers. My hon'ble friend Sir S. Bayley has explained that all other causes may be expected to fall under those which bring about a rise of prices, and, if they be not so, it is clear that the modification is in favour of the raiyat. In no case is the landlord to receive more than one-half of the increased increment so brought about.

"Among the grounds of enhancement under the existing law was the circumstance that the quantity of land held by the raiyat is proved by measurement to be greater than the quantity for which rent was previously paid. This provision appears in a different place in the Bill for reasons which were given in the Statement of Objects and Reasons, but an important alteration has been made in it for the benefit of the raiyat by the restriction that the landlord is not to measure more than once in ten years. In the absence of a cadastral survey such frequent measurements are a preliminary to a demand for increased rent, and give rise to serious disputes and much bitter feeling. Further, by requiring the Court, when determining the area for which rent has been previously paid, to have regard to the origin of the tenancy, the length of time during which it has lasted without dispute, local usage and like considerations, we have endeavoured to guard against enhancements which were really a rack-rent being granted on this plea.

"I have thus gone through the grounds of enhancement recognised by the Bill, and have shown that they are each qualified by special restrictions to prevent their operating so as to weigh down the raiyat. We have, it is quite true, removed the public scandal to which I have already adverted, but in so doing we have not necessarily, we believe, subjected the tenant to rack-renting.

"Besides the limitations on the working of each rule, we have laid down for all cases the broad principle that the Court shall not in any case decree an enhancement which is under the circumstances of the case unfair or inequitable. It has been objected that this rule, however broad and benevolent in intention, will prove from its vagueness of no practical value for the protection of the tenant, and that we should have defined precisely in the Act for the guidance of the Courts 'a fair and equitable rent.' To such objections I can only say, try your hand at such a definition. The many able officers who have taken part in this long controversy from its first beginning, the Government of Bengal, the Government of India, and I may add the Imperial Parliament, have all failed to produce a definition of a fair and equitable rent which could be safely acted on by the Courts; and our Committee need feel no shame at being unable to do that to which they proved unequal. The Courts must be left to deal with each case on its own merits, and to exercise a judicial discretion arrived at after a careful consideration of all the circumstances. That such a discretion will be inoperative in checking unfair and inequitable enhancements I cannot bring myself to believe.

"But although we were unable to lay down a rigid rule for determining a fair and equitable rent which would suit the varying circumstances of the six or seven millions of occu-

pancy-raiyats throughout the two provinces, there was one matter on which we were nearly all agreed, that a rigid rule was both expedient and necessary. We recognised fully the landlord's right to enhance the rent of his tenants, and we authorised him to bring suits for the purpose on certain specified grounds, but we were satisfied that when he had thus attempted to enhance a tenant's rent, and obtained his enhancement, or failed to obtain it because there were no good grounds for it, the tenant should not for a considerable period be subjected to the worry and expense of a similar suit, or to threats of a similar suit, which would be equally effective for the landlord's object. This term was fixed in the Bill as introduced at 10 years, thereby following the precedent of the North-Western Provinces Act. In the Bill now before Council the term has been extended to 15 years—a term which, in my opinion, does not err on the side of excessive length. This provision gives the raiyat rest for 15 years. He cannot, as at present, be harassed by annual notices of enhancement which threaten to absorb the fruits of his industry and prevent his applying his full skill and labour to the cultivation of his holding. He has now the assurance that, let the karindár or thíkádár bluster as they may, so long as he pays the rent last settled, no legal pressure can be brought to bear on him; and this security and the independence engendered by it nerve him to resist all the more stoutly demands which have no legal warrant. I cannot hold this provision to be a feeble palliative; on the contrary I believe it to be a strong shield against unjust enhancements.

"We have also enabled the Courts to temper the rigour of their decrees by empowering them to direct that the enhancement shall be progressive if they think hardship would be the effect of giving full effect to it at once.

"The provisions as to the reduction of the occupancy-raiyat's rent are much the same as in the existing law, except that reduction, like enhancement, is made to depend on variation in the prices of staple food-crops. The same reasons which justified the adoption of this as a ground of enhancement warrant its retention as a ground of reduction. The arguments which tell for or against it in the one case are equally applicable to the other. If it is inequitable that a landlord should obtain an enhancement of rent on account of a general rise in prices or fall in the value of money as indicated by a rise in the price of staple food-crops, it cannot be contended that the tenant's rent should be reduced for this reason. On the other hand, those, of whom I am one, who hold that a rise of prices is a proper ground for enhancement of rent are ready to admit that it is an equally strong ground for reduction.

"We, however, go one step further than the existing law in this matter. We not only allow reduction for suit on specified grounds, as at present, but we provide a remedy for an evil which has already proved a scandal to the administration, namely, irregular enhancements of rent carried to such an extent as to endanger the welfare of the locality or public order. Under the former class fall those enhancements up to 500 per cent. to which I have already alluded, and under the latter those which brought about the Pabná and Maimansingh raiyats. With such evils the ordinary course of law is an engine too cumbrous and too tedious in its operation to deal effectively. People cannot be allowed to perish, or on the other hand to spread destruction over whole parganas while cases are being tried by the ordinary tribunals and fought out in appeal to the High Courts. The remedy must be prompt and drastic. We have accordingly empowered the Local Government, when it is itself satisfied and can satisfy the Governor General in Council that such a remedy is needed, to apply it by enabling a Settlement-officer to settle all rents and to reduce rents in any specified area generally or with reference to specified cases or classes of cases, if in his opinion the maintenance of existing rents would on any ground, whether mentioned in this Act or not, be unfair or inequitable.

"The power is not one to be lightly exercised, but the knowledge that Government has in its hands such a weapon must operate as a check on the oppressive exactions of grasping landlords.

"I have, I fear to the great weariness of my hearers, enumerated in detail the provisions respecting the rent of the occupancy-tenant, because it is on this point mainly that we are accused of having done least for him, or rather of having rendered his position worse than it is at present; but the objection underlying the arguments of some at least of the assailants of the Bill on this ground is not that we have done too little for the raiyat but that we have done too much for the zamíndár. They oppose really any ground of enhancement which can be made workable. They think that the raiyat will be better off by taking his chance under the existing law, which is so difficult for the Courts to give effect to, than if subjected to rules, however guarded, which can be made a reality. They are loud in their clamours against the restrictions by which it is proposed to qualify the rules in the Bill, but they have failed altogether to suggest others of a more satisfactory nature, or to substitute grounds of enhancement which would be free from the abuses to which they believe that these will be liable. We, on the contrary, think that no grounds of enhancement should be offered to landlords which the Courts are unable to work; and, while recognising reasonable and workable grounds of enhancement in the Bill, we have, to the best of our ability and judgment, made such provisions as will prevent their working unfairly or inequitably. By doing so we withdraw a strong encouragement hitherto held out to irregular enhancements, and instead of a fitful and uncertain protection arising from the difficulty of working the rules, we give to the tenant the security that the rules cannot be worked to his injury.

"As regards another class of objectors who describe the restrictions we have imposed as 'feeble palliatives impotent to restrain the evils which the working of the enhancement sections is calculated to produce,' I hope I have satisfied the Council that this description does not accurately represent such measures as the modification of the rule respecting the prevailing

rate, the deduction of one-third of the increase claimable on account of rise of prices, the provisions that only *bonâ fide* improvements by landlords and the benefits flowing from them to the tenants can authorise enhancement, the precautions to guard against a tenant's rent being unfairly enhanced on re-measurement, the general rules as to all decreed rents being fair and equitable, as to rents once settled being undisturbed for fifteen years, and as to progressive enhancements, and lastly, the power reserved to the Local Government to send in the Settlement-officer to reduce rents without reference to the grounds specified in the Act when the local welfare or public order require the adoption of such a course. If these be feeble palliatives it is difficult to say by what other restrictions the grounds of enhancement could have been qualified which would not amount to a declaration that those grounds might remain on the Statute-book as a reasonable concession to landlords, but that in the interests of the tenants no practical effect should be given to them.

"We have further, as explained by my hon'ble friend the mover, applied remedies to the abuses of the right of distraint, of the collection of rent by monthly instalments, of the power of bringing, or threatening to bring, frequent suits for arrears; and we have endeavoured, by rules respecting the delivery of receipts and statements of account, to furnish all tenants with materials for resisting unjust claims for arrears of rent. Though petty in appearance, these are matters which closely affect the happiness and welfare of the raiyat.

"Finally, we have by the Record-of-rights chapter laid the foundation of a system which will in time extend to Bengal the benefits which have elsewhere been found to follow in the preparation and maintenance of an accurate record of the rights of the different classes having interests in the soil. This system cannot be brought into force over the whole country at once, and must of necessity be gradual in its operation, but as it spreads it will dispel the darkness as to agricultural facts which has so long covered these provinces, will determine the mutual rights of landlords and tenants where they are uncertain, and by furnishing both with a correct measure of those rights will increase the value of landed property, will remove causes of strife, will deprive the powerful of pretexts for enhancement, and will strengthen the weak to withstand oppression."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said:—"I regret that I cannot support the motion of the hon'ble member that the Bill should be taken into consideration. In my opinion it is not submitted to the Council in a form in which we can reasonably be asked to consider it. It comes before us disapproved and discredited by all parties. The raiyats are as much opposed to it as the zamíndárs; and are we, who are legislating in the interests of the zamíndárs and the raiyats, altogether to disregard their wishes and their opinions? Is there a single raiyat or a single zamíndár in the country who desires that this Bill should be passed? And if it is an undoubted and an undisputed fact that neither zamíndárs not raiyats desire this measure, will this Council be justified in forcing it upon them? Are we to suppose that zamíndárs and raiyats are alike ignorant of their true interests? Surely they may be trusted to know whether a law will injuriously affect them or not. But if we are to disregard the expressed wishes of the parties who will be affected by the proposed legislation, upon whose opinion is the Council to rely? Are we to rely on the Select Committee? The Select Committee consisted of eleven members, but out of this number only three have signed the Report without reservation. All the other members have on most important particulars dissented from the Report. The Report, therefore, and the Bill, which has been drafted in accordance with the Report, is practically the Report and Bill of three members only: and two out of the three hon'ble members have no practical experience of Bengal. The Bill, therefore, comes before us discredited and disowned by the majority of the Select Committee itself. If the Select Committee had been unanimous in their recommendations, some sort of justification might have been found for proceeding further with a measure which has been so universally condemned. But with this great divergence of opinion among the members of the Select Committee, there seems to me no other alternative but to withdraw the Bill. It cannot be expected that the members of this Council should accept the Report of the Select Committee as an authoritative document. If the members of the Select Committe are not themselves agreed as to the principles of the Bill, is it reasonable to expect that this Council should act upon their recommendations? If the Bill in its present shape is proceeded with, all the questions which engaged the attention of the Select Committee will necessarily be re-opened in this Council, and every hon'ble member will have to form his independent opinion upon them. But here an initial difficulty presents itself. There is absolutely no reliable information upon which you can proceed. The Select Committee had no evidence before them. They acted upon official opinions. which were generally conflicting and often misleading. My hon'ble friend Mr. Hunter has well described in his dissent the difficulty in which the Select Committee was placed. 'The Select Committee,' he writes, 'has been asked to deal with the entire relation of landlord and tenant in Bengal without being furnished with any body of cross-examined evidence to guide its deliberations Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land right in Bengal, for in Bengal, almost alone among the provinces of India, there is no central department of statistics * * * which might in some measure have compensated for the evidence of witnesses heard in the districts. * * * The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.' Is this Bill, then, my Lord, ripe for discussion? Are we to legislate in uncertainty? Are we to pass a measure which will revolutionize and disorganize the whole rural economy of

the country, without having any reliable data before us? From the very first the zamíndárs have demanded an enquiry. They deny the facts and the assumptions upon which the Government of Bengal has proceeded. I will give one or two illustrations. The justification of the occupancy clauses in the Bill was based upon the fact that the zamíndárs of Bihár were in the habit of shifting their raiyats to prevent the accrual of occupancy-rights. This fact, in their memorial to the Secretary of State, the zamíndárs of Bihár emphatically denied. From my own experience I can affirm this denial. I can state as a fact that such a custom is not prevalent in Bihár, and that I have never even heard of its existence, and yet the whole of the legislation with regard to those occupancy-rights has proceeded on an assumption which is absolutely baseless. Another charge made against the zamíndárs of Bihár was that they rack-rented their raiyats; that rents were so excessive that the raiyats were left without a reasonable margin for subsistence. In their memorial to the Secretary of State the zamíndárs of Bihár conclusively, as I think, showed that the charge was baseless, but the restrictions on enhancement have been mainly introduced into the Bill on the assumption that the charge is true. Is this fair upon the zamíndárs? Have they not a right to ask that their rights shall not be taken away on mere assumptions? Have they not a right to demand that the charges brought against them shall be sifted and examined before the legislature is invoked against them? But the Bill itself contains the best commentary on this charge. These raiyats, who are supposed to be so ground down and oppressed, are allowed to demand from their under-raiyats 50 per cent more than they themselves pay. You are asked to restrict the demand of the zamíndár upon the raiyat, and at the same time to allow the same raiyat to demand for the same land 50 per cent. more than he pays himself. Can any inconsistency be greater? I have merely given these illustrations by way of example to show that we are legislating in the dark. The foundations of the Bill rest upon facts which are alleged and denied, and upon assumptions which are challenged as untrue. We have no ascertained facts before us upon which we can possibly proceed. There is assertion on the one side and denial on the other, and the truth has yet to be ascertained. If this is a correct description of the position in which we stand, is it possible to proceed with the Bill? How are we to decide between conflicting assertions? We may repeat in this Council the interminable discussions of the Select Committee, but in the absence of ascertained facts we shall not be able to arrive at any satisfactory conclusion. To me it seems amazing that we should be considering the matter at all. Among the many millions of people who will be affected by the Bill not a single voice has been raised in its favour. If it is passed, for whose benefit will it be passed? It surely cannot be wise to pass a Bill which will benefit no one and irritate every one. I look upon the Bill as disastrous in every point of view. It will be disastrous in a political point of view, because it will be regarded as a flagrant breach of the Permanent Settlement, and will therefore shake the confidence of the landed proprietors in the Government. It will be disastrous to the zamíndárs, because it will not only deprive them of their rights but will render zamíndári management for the future absolutely impossible. It will be disastrous to the raiyats, because it will give rise to endless disputes and lead to interminable litigation. For these reasons I am strongly of opinion that the Bill should be withdrawn, and that any measure which may hereafter be proposed should be drawn up on the lines of the present law, instead of sweeping away existing landmarks and disorganizing the whole fabric of rural society. I shall, therefore, vote against the motion that the Bill be taken into consideration."

The Hon'ble Mr. Evans said:—"I have to apologise to the Council and to Your Excellency for not being fully prepared to speak to-day on this important measure. Knowing the strong opposition of the Mahárájá of Durbhunga to the Bill, I not unnaturally counted upon his speech taking up the rest of this afternoon. I can only ask the indulgence of the Council in case my observations should in some respects be discursive, and in other respects insufficient, considering the importance of the measure before the Council.

"Your Excellency can well believe that it is with great reluctance that I have taken any active share in this legislation. My own heavy professional engagements and the active opposition of many of my personal friends to this measure all combined to make me desire to avoid it. Believing, however, as I did and do, that some legislation on the subject was, in consequence of the admitted imperfections of the Act of 1859, necessary for the welfare of the country, I did not feel myself at liberty to decline to give what assistance I could to the undertaking.

"In this task the Select Committee have been beset by many difficulties, of which perhaps one of the greatest is the initial mistake that was made in not having two Bills, one for Bihár and one for Bengal. I have always thought this a mistake, and I believe other members of the Select Committee have thought the same.

"In Bihár, as a rule, the landlord is strong, the raiyat weak. In most parts of Bengal, notably in the Eastern Districts, the raiyat is stronger than the landlord. It was, however, decided by Government that the Bill was to be a general rent law, and not two special laws to meet the wants of the two provinces. We have done our best under these circumstances. But the result is unavoidable, that those whose eyes are mainly fixed on the poorest parts of Bihár say we have not done enough for the raiyat, while those who mainly regard the condition of Eastern Bengal accuse us of having done too much for the raiyat and having done too little for the landlord. There have been very strong statements before us that in Bihár, or portions of Bihár, the raiyats are so rack-rented that they have absolutely no sufficient margin for subsistence; they are described as having an actual insufficiency of food. If things are as described by some of the officers of Government, and if this state of things can be remedied by legislation, it would justify legislation of a most drastic character for the special local areas

where these evils prevail. If it be shown that these evils arise from rack-renting, and can be cured by stopping enhancement altogether, or even by reducing the rents, it should be done by special legislation.

"But all that we can do in laying down general rules for the regulation of the law between landlord and tenant is to provide such rules as shall prevent such a state of things arising where it does not already exist, and to arm the executive with power to interfere, if absolutely necessary for the public welfare, pending the further enquiries necessary for legislation of such an exceptional character. This I think we have done. My hon'ble friend the Mahárájá of Durbhunga denies that such a state of things exists among the raiyats in Bihár, and it may be that the poorest class are sub-raiyats. It may be, again, that many of them are technically raiyats holding as such a very small portion of land, too small for the subsistence of themselves and their families, and eking out a scanty subsistence by holding land at a rack-rent under substantial raiyats and by working as day-labourers. This state of things would require a different class of legislation. These considerations have led me to the belief that this question of peculiar special local areas must perforce be left to special legislation. It would be wrong to legislate for the sixty-nine millions in Bengal upon any idea that such was the case in general, or that such things prevailed to an extent which would justify us in offering a remedy by any general rules. Having said this much, I desire particularly to say that if such a state of things can be shown to exist, and to be capable of being remedied by legislative attempts, I for one am perfectly willing to adopt that special remedy which may be shown to be necessary. Before noticing the special provisions of this Bill, I desire to say a few words upon the history of the occupancy-right. The subject has been so exhaustively discussed on both sides that I can add little to what has been said, and what little I have to say arises mainly out of a fresh pamphlet recently published. I have here before me a pamphlet entitled 'Proprietory Rights of the Zamíndárs,' issued by the Central Committee of the Landholders of Bengal and Bihár. I am glad to see from this work that upon one point we are agreed. In page 12 I find these words:—

'Under the customary law the resident or occupancy-raiyat was entitled to hold his land so long as he paid the general rates which were settled for the village or pargana in which he lived: so far both sides agree.'

"We have this much to agree with at any rate, that, on the universal customary law of India, there is a fixity of tenure, so long as a man pays his rent; and the book goes on to say that the real point in the zamíndár's opinion is the question of how he is to enhance, and it goes on further to say that the will of the zamíndár should be the sole arbitrator of the amount of enhancement, and it challenges us to show that at any time in Bengal since the time of the Permanent Settlement the ruling power has ever exercised the power of regulating the assessments upon the individual raiyats. No doubt, though by the institutes of Akbar, the relative proportions of the produce were settled between the cultivator and Government, yet, as Mr. Shore said, even when the Government professedly dealt with the raiyats, it was found impossible in practice to assess each individual cultivator, and so the distribution of the assessment was left in Bengal to the zamíndárs. But this is very different from a right to demand what they pleased. I certainly agree with the Court of Directors that it was 'a general maxim under the Moghul Government that the immediate cultivator of the soil, paying his rent, should not be dispossessed. This necessarily supposes that there are some measures and limits by which the rent could be defined, and that it was not left to the arbitrary discretion of the zamíndárs.' It is, I think, quite evident that there was a right of some sort in the cultivator which was not illusory. There was some kind of right as regards the quantity of rent. The fact that it was the zamíndár and not the Sovereign that fixed the rent can be very easily accounted for. In a huge despotism like that of the Moghuls,—a central despotism,—powers to a very large extent were delegated to the Provincial Governments, which in turn delegated many of their powers to the great princes and the great zamíndárs; and we all know that these great princes and zamíndárs exercised the authority and the functions of Government, both civil and, to a certain extent, criminal as well; and therefore it came to pass that with regard to these matters of revenue over which there was no control by any Courts in those days, nor any written law, no redress could be had save possibly by petition to the Executive Government, which would, save in rare cases, receive little attention. So far as we know, no questions of rent were allowed to be discussed in the Courts, and the consequence was that the settlement of all questions *quoad* the raiyat was in the hands of the zamíndárs not as owners of the land but as delegates of the Sovereign. It is admitted now that the zamíndár had really proprietary and hereditary rights; but how could he assert those rights? Could he go to a Court of law and ask for a decree against the Sovereign Power? He had to take what he could get from the Sovereign Power; hence it was that with a despotic Sovereign Power all rights must necessarily be uncertain in their enjoyment. There was no tribunal to appeal to, and all proprietory rights were of a precarious nature. But we know that, however despotic a Government may be, rights of property must be recognised more or less. Subjects and rulers both recognise the existence of unwritten law and customs even under a despotism, and are generally guided by them, even though they often use their powers to trample on them. Therefore, I do not think there is anything in this objection, that the Sovereign did not directly fix the individual raiyat's assessment. If the Central Government was far away, the delegate was allowed to do what he liked. I think it comes to what Mr. Harrington says in his 'Analysis' that in the decay of the Moghul Power the ruling Power plundered the great zamíndárs, who were in turn forced to plunder the raiyats. That is, I think, the real explanation of much of the confusion which has been thrown upon this subject. When in later and

more peaceful times the matter came to be examined, then the fact became clear, which is stated in the Report of the Parliamentary Committee of 1832, that—

'In the general opinion of the agricultural population, the right of the raiyat is considered as the greatest right in the country; but it is an untransferable right.'

"And they go on to say:—

'This part of the evidence before your Committee has been particularly adverted to, as it is of so much importance that the Government cannot be too active in the protection of the cultivating classes, for the vital question to the raiyat is the amount of the assessment he pays.'

"If this be so, we really find the position to be as follows:—It being conceded now that there is such a thing as a customary law giving such occupancy-rights, it follows that everybody who before the Permanent Settlement had held or reclaimed land in his own village, without exception, acquired occupancy-rights. What was the effect of the Permanent Settlement? It was a contract between the Government and the zamíndárs in which the Government gave the zamíndárs certain rights, and the Government had declared, so far as the Government could declare, that the zamíndárs were the proprietors. But this cannot be said to make any alteration in the unwritten law, nor could it affect any persons who were not parties to the contract; and the case may be stated thus. The man who came in the next day after the making of that settlement, who claimed land or held land in his own village, was under the same old customary law as before, and by virtue of that law acquired a right of occupancy. The truth is that, at the time of the Permanent Settlement, Government settled their own disputes and quarrels with the zamíndárs. They were very numerous, and zamíndárs had just reason to complain, and did in fact make the complaint heard in Parliament. The final settlement of all these difficulties as to the respective rights of Government and zamíndárs was come to in the Permanent Settlement. The Government, finding that the matter of the rights of the raiyats was an obscure and complicated matter, which they could not go into on account of its intricacies, left it alone, because they thought it could probably be settled by agreement between the zamíndárs and their raiyats, much in the same way as they had settled the difficulties between themselves and the zamíndárs. But what was the position? The raiyats continued as they came in to cultivate their lands and to acquire the same rights under the same old customary law, which was never abrogated save so far as it might be affected by the express provisions of any of the Regulations. The only difference was that, whereas before they acquired their rights against the Government and zamíndár, after the Permanent Settlement they acquired the same rights against the zamíndár, as representing his own and the Government title, and that the Government had left only a perpetual charge on the land with the duty solemnly reserved to protect the raiyats, and to legislate when they thought it necessary for their protection.

"But the hoped for result did not come to pass. The raiyats and zamíndárs did not settle their respective rights amicably, and so it befell that, at the end of 60 years, the legislature found it necessary to lay down some rules in regard to the enhancement of the rates of rent which were demandable from the raiyat. Now one of the main arguments of this pamphlet is that the legislation of 1859 was a breach of the Permanent Settlement; and they make it out in this way. They say that before the Permanent Settlement they had the right to demand rent according to their own arbitrary discretion. Shorn as they have been of their civil and criminal jurisdiction, and no longer representing the ruler's power, they still contend that their will is the measure of enhancement, and that the effect of the reign of law which the British Government have introduced is that the Courts ought to register their arbitrary demands as decrees, and that the resistless might of the executive should be at their call to enforce their decrees and protect their persons. It is upon this view of their rights that the pamphlet really proceeds. It is upon that ground, they say, that we departed from the Permanent Settlement in that Act of 1859. I deny that altogether. I think it was clearly competent to the Government to legislate as it then did. But it is idle to go into a question like that, because, if they once admit that the Government had the power, in 1859, to make these rules to regulate the rent, and to define the occupancy-raiyat, they cannot deny that this Council has in 1884 the right to amend the definition and the rules. If they rest on the argument that the legislation of 1859 was improper, we can only say that that question is long ago concluded by authority, and that it is useless to discuss it save as a forensic exercise. As regards the position in 1859, it stood very much in this way. Nothing had been done for 60 years, and it was found that matters were not satisfactory. The legislature came to the conclusion to make rules. They first desired to define who had the right of occupancy, so as to enable the Courts to ascertain that fact. Then they proceeded to make what they considered to be fair and equitable rules to guide the Courts in decreeing enhancements of the rents of occupancy-raiyats, and they made an express reservation that the occupancy-right should not accrue in respect of any land as to which the raiyat had contracted expressly that he would give it up at a certain time. As regards those raiyats who had not a right of occupancy, it was decided that they must give up the land on reasonable notice; but that so long as they were allowed to remain, no more than a fair and equitable rent could be demanded from them.

"These were the main provisions, but complaints were soon heard. The zamíndárs complained that the grounds of enhancement were unworkable, and that they found moreover often insurmountable difficulties in obtaining in fact the enhancement to which they were in theory entitled; while those who had at heart the interests of the raiyat complained that the effect of the definition as construed by the Courts was to defeat the intention of the framers of the Act, and to shut out from the status of occupancy a large number of raiyats who were

entitled to it. It was complained of on both sides. The raiyats, or those who spoke for them complained that they had very great difficulty in proving the occupancy-right. They pointed out the immense difficulty of proving 12 years' continued cultivation of the same plot of land, in that there were no fences as in England. The raiyat might be holding five or six little plots in a large plain of rice-land divided into plots by temporary ridges of mud. The only documentary evidence, measurement-papers and zamíndári records of rents and holdings were all in the hands of the zamíndárs and liable to falsification by zamíndári servants. They also complained in respect of various portions of Bíhár that there was a practice of shifting them from one village to another. Now I understand my hon'ble friend the Mahárájá to say he has ascertained that that is not done for the purpose of preventing the accrual of the occupancy-right. That may be so, but this much is certain, that for some reason or other the raiyats in many, if not most, parts of Bíhár were unable to avail themselves of the protection of the occupancy clauses even to the limited extent which their brethren in Bengal could and did. On the other hand, the zamíndár complained, and complained rightly, that he could not get the enhancement he was in theory entitled to. We all know the immense difference between what is the result in theory and fact. It was one thing to discover the motive power of steam and another to construct the locomotive engine. The data were left to the Courts to discover, and unless the Courts found the data it was impossible to work the rules at all; and in working these rules there were very many difficulties I will not go into them in detail; they are familiar to all who are conversant with the subject. Now it is a very demoralising state of things when we dangle before a man's eyes his rights, and assure him they are his rights, and send him to our Courts to enforce them, and then provide the Courts with such rules that the odds are against his getting them. Perhaps the most workable of the rules was the 'prevailing rate' as interpreted by the Courts, but the vagueness of the expression 'places adjacent' rendered this uncertain. Besides, if the 'prevailing rates' were too low, he got no remedy under this head. It has been said that it was the outcry of the zamíndárs on this head, and on the score of difficulty in realising rents that lead to this legislation, and that we have forgotten this, and legislated in favour of the raiyat instead. But we have tried to grapple with both the evils above mentioned by altering the definition in favour of the raiyat and making the grounds of enhancement workable in favour of the zamíndár; and if we have failed to facilitate in any marked degree the realisation of rent, it is because all the summary remedies proposed failed to yield just and satisfactory results. Having failed ourselves to do any more than is here set forth, we applied to the Judges, and the Council have seen their answer.

"As to the charge of having legislated for the raiyat without sufficient reason, you will have seen what has been said about the imperfection of the Act of 1859, from its passing to the present day, and attention had been directed afresh to this matter by the recent famines, and it was felt to be unjust to redress the complaints of the one side without taking into consideration the just demands of the other side. Besides, it became apparent that our best method of carrying out the often declared policy of the Government of protecting the cultivating classes, who form the bulk of the population, lay in extending the definition of the occupancy-right in such a way and to such an extent as to secure the fruition of that right to the great mass of the raiyats, who in my judgment ought to possess and enjoy it. Believing that with an advancing education nothing but trouble can befall us if our laws do not recognise what the agricultural population firmly believe to be their old and just right, that is, the right of occupancy, I have not hesitated to accept such amendment of law as seemed necessary to that end. I will endeavour to describe briefly what we have done on this essential point. The whole revenue map of Bengal, speaking roughly, is divided into small village areas of different sizes and shapes called mauzás. Now a resident raiyat had by the old custom a right of occupancy in the land in his own village, but in no other land. New villages sprang up, and even within the same village area arose detached clusters of homesteads, subsidiary villages or tol as came into existence, many of them near the boundary of the next village; and as the cohesion of the old village communities with their old organisation decayed, it became more common for the inhabitant of one village to become a permanent cultivator, though not a resident, of an adjoining village. It was thought right in 1859 to make permanence of cultivation and not residence the ground of the occupancy-right. I think this was only such a modification of the old law as might fairly be made to suit the altered conditions of the times, and so the rule laid down in 1859 was that whether a raiyat was a khudkhast raiyat or pykasht raiyat, yet having shown that he cultivated the same land for 12 years he should have a right of occupancy. The mistake was in providing that he should show that he had cultivated that particular piece of land for 12 years. The amendment that we have made is by providing that it should be enough that he is a permanent cultivator either in this or that village area, and that he should thereupon be considered to be an occupancy-raiyat of those village areas in which he is a permanent cultivator. Now this makes a great difference, as we get rid of the whole difficulty of proving that he cultivated a particular plot of land for twelve years. If he is a cultivating raiyat of one mauzá or village where he has his house and in two mauzás alongside, he should be held to be a settled raiyat of the whole three mauzás and have a right of occupancy in all of them.

"It must be abundantly known that a raiyat is not a man who goes about as a nomad, but is really attached to his own village; and so it follows in reason and common sense that he cannot cultivate except near his own village where his home is. If he takes up land he generally takes it up permanently. He may take it up for a temporary purpose, but ordinarily he takes it up either in his own mauzá or in the adjoining ones, and then no power can drive these men out of their own villages. The result is that this rule goes far to secure that the ordinary class of raiyats shall be entitled to the occupancy-right. We have made a further provision.

Whereas the Act of 1859 said 'you shall be an occupancy-raiyat of every piece of land which you have cultivated for twelve years,' yet it has this exception, 'provided that the landlord does not prove a contract by which the raiyat took up the land on the condition of not being an occupancy-raiyat.' It is no doubt a strong thing to override a written contract, but it was thought that there was a tendency to insert this in every contract, and there is no doubt that it would be inserted to a very large extent; and therefore the Committee assented, though not without reluctance, to the insertion of a provision by which the raiyat is barred from contracting himself out of his occupancy-right. It was of very paramount importance to my mind that we should secure this right of occupancy to the raiyats, and not leave room for any device by which it might be defeated, bearing in mind that with illiterate and poor persons anxious to get land a provision of the kind might easily be slipped into a document. It was also apparent that both the zamíndárs and under-tenure-holders here are not people who desire the possession of land for cultivation, but they are simply rent-receivers. The only thing they desire is that the land shall be cultivated by the raiyats, and that they will pay as much rent as possible, and as regards the bulk of the zamíndárs of Bengal, there is not much hardship, because you are merely attaching a customary incident to the holding, and the only result is that the landlord is bound to enhance according to certain rules and not arbitrarily. Such a man cannot very much complain if we provide that the land shall be held under such circumstances that the right to enhance shall not be arbitrary but according to fixed rules. But there is another class of proprietors in respect of whom there really appears to be considerable hardship. These are persons who acquired land for the purpose of cultivating, at an expense beyond the power of the raiyat, certain valuable crops, such as tea and indigo. They have great ground to complain of these restrictions, namely, that it prevents them letting out temporarily to residents of the village any lands which they do not for that year wish to cultivate themselves. They say, very rightly, 'we want to let out the lands, which we wish to be cultivated for a year or two.' Take an ordinary case. The indigo plant derives its nourishment very far down in the ground, and it is a very exhausting crop. Rice, on the other hand, grows right on the top of the land, and does not exhaust the land except near the surface. An indigo-planter has in his hands a large tract of land, say, of 2,000 bíghás, on which he grew indigo last year. The raiyats, on the other hand, have another tract of land in their possession, and they come under the new Bill and say, 'let us have the land, which will give us an abundant crop of rice, and do you take our land for indigo for this year. We will pay you so much for your land, and we will give you back your land next year.' Under our legislation the zamíndár is obliged to say 'I must let the land to a person from another village, because you will acquire occupancy rights in this land; you are not competent to contract, and therefore, though a stranger offers me only half the rent, I must either let it to him or keep the land fallow or try and grow another crop of indigo, because the legislature has determined that you shall not contract yourself out of the right of occupancy. I should have to trust to your honesty, because the law will not recognize a contract entered into by you.' There is no doubt whatever of the very considerable hardship of this provision, and the only thing which will justify the doing of it is that the class it will affect is small. It is not very clear how landlords can protect themselves against this provision. Possibly they may do so by letting the land to a stranger or by getting the raiyats to exchange the lands which they cultivate, under some form of contract not amounting to a tenancy. But this, even if possible, would not meet all cases. I still hope that my hon'ble friend Mr. Ilbert may see his way to drafting some clauses which will give relief in these cases, while providing against abuse.

"The evil to be guarded against is that, if a raiyat is allowed to contract himself out of the occupancy-right, such a condition would, I fear, in time be found in every pattá, and thus the main object of protecting the occupancy-right would be defeated. The result of this legislation is that the bulk of the raiyats must be occupancy-raiyats, though new raiyats coming in from time to time would not become occupancy-raiyats until the expiration of twelve years.

"We have gone further and provided that when a raiyat is found cultivating as a raiyat, that is paying rent for any piece of land, he shall in a suit by his landlord to whom he pays rent have the advantage of a presumption that he has been cultivating that piece of land for twelve years.

"The reasons for doing this are that the documentary evidence on this head is in the landlord's hands, and not in his, and that as a matter of fact most of the land is cultivated permanently, and the raiyat is often so poor and illiterate and so ill equipped to meet litigation, and so ill provided with money and reliable evidence, that it was feared that, without some provision of this kind, our efforts to secure him the enjoyment of the occupancy-right would not have the desired effect.

"This provision has been much complained of, but many of the strictures made on it are based on misconception. He does not by this clause get a general presumption that he is an occupancy-raiyat in consequence of his holding some undisclosed piece of land in the village or the estate. He gets the presumption only as against the landlord to whom he pays his rent, and who has the best evidence in his hands, and only as regards the particular land in dispute. This limitation, when duly borne in mind, disposes of many of the objections made against this presumption, though no doubt some remain in the case of the auction-purchaser, and will have to be discussed on the proposed amendments. But I think, in spite of them, it should be retained. As to the relief to the raiyat in cases when his occupancy-right is threatened to be disputed in Court, it is immense. The difference in all countries is great when the onus of proof is shifted on one side or the other. The person on whom the onus of proof lies has always to discharge a heavy burden. But if the onus of proof is so burdensome in all cases in

countries where facts are more or less ascertainable, what must it be in this country, where everything brought before the Courts is too often illusory, where oral testimony evidence is so often worthless, and documentary evidence is frequently forged? I don't mean to say that the zamíndárs tamper with their documentary evidence, but it is quite certain that the gumáshtas and other inferior servants do it. This being the state of things, it makes an enormous difference on which side the burden of proof is thrown, and it may be said that it is easier for the zamíndár with his documentary evidence to prove that the particular piece of land has not been held by the raiyat for twelve years than for the raiyat to prove that it has been so held. I think that is going a long way in behalf of the raiyat, and I am astonished to find that my hon'ble friend Mr. Reynolds appears to think that we have not gone far enough and that we ought to give him an occupancy-right in the estate, if he has held any land in any part of it for twelve years. I must point out the difference between a village and an estate, and the effect of introducing the word 'estate,' which has been cut out by the majority of the Committee. The villagers are the villagers of a particular village, just as much as parishioners are parishioners of a particular parish; and the best illustration is to describe a village as a parish. Then the position is this. If a man is asked where he comes from, he at once says, 'I am so and so, the son of so and so, of a particular village.' On the other hand, an estate is an abstraction, a revenue-unit on which the Government revenue is paid, and which is liable to be sold up in default of payment of revenue. This unit is sometimes very large. It extends sometimes to 50 or 100 miles. Still the zamíndárs frequently sublet the estate in whole or in part, often in a number of perpetual tenures, generally known in Bengal as patnís. Each patnídár may again sublet in perpetuity by one or more under-patnís, and so on.

"Now, it is the lowest in gradation of the under-landholders who has to deal direct with the raiyat. He perhaps has in his tenure 10 villages out of 100 or 1,000 forming the estate, or he may have only one village. He can tell who are the raiyats of his villages. He has got power there and the means of knowledge, but with regard to the other villages in the estate he knows no more than I do. Why should the tenure-holders of other villages give him any information? Now, what is the result? When in good faith a small tenure-holder has let a little piece of land to a stranger, this stranger says 'No doubt I said I will give up the land in a year or two, but I have a brother 20 miles away in the same estate; and although I am not even on the register of the landowner there, I enjoy it jointly with my brother, and under the cover of my brother I am a settled raiyat of the whole estate, and therefore I cannot cultivate any land in this large estate without acquiring the right of occupancy.'

"The particular landlord of this man knows nothing of the distant place, and cannot well ascertain whether the story is true or false. There is no warrant for this in the old customary law of the country, and I do not see any reason for doing that which it is so very difficult to justify. I am aware that this word 'estate' is in the Secretary of State's despatch, and in the Bill as originally framed; but it is doubtful if the Secretary of State ever considered this particular point, or used the word in this sense. But whether he did or not matters little, for neither his despatch nor the Bill as first drafted contained the presumption, and it is very evident to me that my hon'ble friend cannot have both. It is going altogether too far.

"I hope I have satisfactorily shown that we have done a great deal for these occupancy-raiyats, and that we have strong reason for doing it. I have next to consider what we have done for the zamíndárs, because the allegation is that, while we have done a little for the raiyat, we have done nothing for the zamíndár. First of all, we have provided that the rise of prices shall be a ground of enhancement. It appears to me that that is in effect to fix the present rent in the staple grain of the country, so that the zamíndárs shall get the benefit of a rise in the value of the grain, with this proviso, that they shall not get the whole of the rise but only two-thirds, one-third being reserved to cover the increased cost of production, and that the rise should be a rise in the average price of over a period of ten years. It must be evident that this will be very beneficial to the zamíndár. First, we know that the value of money, as compared with the value of grain, has been falling; that 12 annas per maund was the price of rice at the time of the Permanent Settlement, and we see how enormously more silver it now takes to purchase a maund of rice. The result of this amendment is to establish a sort of self-acting scale by which the Courts, by performing a simple sum in arithmetic by reference to the Government price-list, would regulate the enhancement, and the zamíndár would be enormously benefited, and saved much of the present harassing and uncertain litigation. We know that in a great part of the country the rise in the price of cereals has been very great, but the provision in the Bill merely fixes the rent of the zamíndár, so far as the ground goes, at so many maunds of grain. At the present time no permanent fall of prices need be expected, as prices are steadily rising over decennial periods, though they are falling in certain years which only affect the average. No doubt the zamíndár may say, 'Why do you call this a ground of enhancement at all? It is merely adjusting the rent to meet the depreciation of money as compared with grain.' But it is something which he had not before and which will give him steady enhancement, and, this being so, no word-splitting will alter the reality of this ground of enhancement, and most zamíndárs who wish to get on without harassing litigation will hail this as a substantial relief from the present position as regards the power of enhancing occupancy-raiyats. On the other hand, it has been said that this is a very sharp weapon to place in the hands of the zamíndárs, and that this enhancement ought to be treated as a great boon, and that, this boon being granted, the prevailing rate ought to be struck out. But this is simple justice to the zamíndár if you accept the Secretary of State's clear enunciation that the rents at present existing are to be considered fair, and not to be reduced except

under special cases. The real meaning of the complaint is that it is believed that certain parts of Bihár are rack-rented already, and that any enhancement we legalise is an unmixed evil.

"If the districts of Bihár are so rack-rented, nothing you can do in the way of laying down general principles will help it. You must have special legislation to meet such cases. I therefore say that what we have done in respect of enhancement on the ground of rise in prices, while it is but justice to the zamíndár, greatly betters his position, and is a substantial amendment in his favour. Then we come to the question of the prevailing rate. It has been said that that provision should be struck out. I wish to point out that enhancement on the ground of the prevailing rate has existed in one form or another from the time of the Permanent Settlement. This ground of the prevailing rate is a ground on which enhancement was allowed, and it was put in the Act of 1859, and it has been worked ever since. We have been strongly pressed by the Government of Bengal to drop the 'prevailing rate' as a ground of enhancement. And I observe that His Honour, in his official dissent, assumes, on the strength of the opinion given by various persons, that this ground is never worked except by fictitious rates. But though there are false cases started under every law that we have made, and fictitious evidence manufactured to meet the requirements of the law, yet, so far as I can learn, the majority of the cases on the prevailing rate contain no more perjury or fabrication than seems to be incidental to the bulk of litigation in this country. At any rate, the appeal pending in the High Court, in which the Government claim on the ground of 'prevailing rate,' enhancements from 100 to 400 per cent., has a strong bearing on this and the next point.

"As to this point, it would seem to show that the legal advisers of Government share my opinion that it is possible to prove an enhancement case on the ground of the prevailing rate without having recourse to fictitious rates or any demoralising process, for it cannot be supposed that any element of that character enters into a case which is in charge of that venerable body the Board of Revenue and the officials under its orders. Of all the grounds given in Act X of 1859, the ground of the prevailing rate has, I think, proved the most workable. I cannot share the apprehension of my hon'ble friend Mr. Reynolds that we have left the occupancy-raiyat defenceless in the matter of fair rent and liable to be forced up to a rack-rent.

"The 'prevailing rate,' which is even more necessary under this Bill than it was before to check the effects of fraud and favouritism of gumáshtas and others, cannot bring the rent higher than the present prevailing rates as increased in money expression by the fall in value of money as compared with grain. They seem therefore fair general rules for places not already rack-rented. As to those places which are rack-rented (if any), I have already expressed my opinion. I have thought it necessary to give reasons for the retention of the 'prevailing rate,' although there is no amendment proposing to strike it out, because the majority of the Committee differed upon the matter with the Government of Bengal, and it appeared necessary to me to justify the position taken up by the majority.

"Section 29, clause (*a*), I consider to be absolutely indefensible. Mr. Henessy's memorial has shown that large proportion of his raiyats have holdings under Rs. 5, and that the cost of registering contracts is prohibitive in such cases, but he has also drawn attention to the fact that in many places it is impossible to get the raiyats to give kabuliyats or take pattás. He instances the case in which the Commissioner of Bhágalpur, Mr. Alonzo Money, entirely failed to force the raiyats to do so on a word estate. And it appears that Mr. Reilly, managing the Chanchal Estate under the Board of Revenue, has equally failed. We all know that it was made a universal rule under the Permanent Settlement regulations that the engagement as to rent should be in writing. We all know that it has been found impossible to enforce this, and that the rent engagements in many parts of the country are still oral, and that the only trustworthy evidence of what the raiyat has agreed to pay is to ascertain what he has actually paid. It would appear that the real effect of sections 28, 29 and 30 is to provide that those raiyats who have no written engagements and who traditionally refuse to sign anything can never be enhanced legally except by suit. What the effect of this will be in cases in which they have orally agreed to enhancements and have paid at enhanced rates for a year or more it is difficult to tell. This matter should be seen to, and some provision made for it. But apart from this I regard clause (*a*) of section 29, which protected the raiyat from agreeing to an enhancement of more than two annas in the rupee or 12½ per cent. out of court as exceedingly mischievous, and likely to lead to lamentable consequences in many cases both to landlord and tenant. It is fatal to the raiyat in many cases.

"Take the Government case against a large body of raiyats in Malanagor, to which I have just referred. There the Government had a very heavy claim, from 100 to 400 per cent., against the raiyats, who number in all 600 or 700. It was certain that, unless the raiyats could establish fixity of rent, an enhancement of far more than 12½ per cent. would be decreed, as they most undoubtedly held for a very long time at very low rates on condition of growing oats. Is it reasonable that, if a test case had been tried, or from some other reason, the raiyats came to the conclusion that it would be to their interest to accept a 25 per cent. or even 50 per cent. enhancement, they should be prohibited from doing so, and the landlord should be forced to drag them each one into Court, and obtain decrees for the full amount he was entitled to with costs, stamp-fees, &c.? There are large numbers of raiyats holding at low rates on condition of cultivating indigo, and it is within my personal knowledge that, when it is proposed to discontinue indigo, they agree willingly to large enhancements of the rents, considering it beneficial to themselves to do so. Mr. Henessy states that he has let lands, the letting value of which is one rupee, for eight annas on condition of the raiyats growing indigo. The raiyats would all be enhanceable on the ground of 'prevailing rate' when indigo is discontinued, and would probably consent to a 50 per cent. enhancement. Is it just to them to

force them into Court with its heavy expenses? Is it just to the landlord to force him to undergo the expense ruinous to him unless he recoups himself by ruining the raiyat? It is not just, nor can I believe it is necessary. At the time of the Permanent Settlement it was thought right to leave everything to contract. We have found that freedom of contract must be limited in certain cases, just as in England it has been found necessary in the matter of hares and rabits. But if there is one thing which the raiyat thoroughly understands and is specially heedful about, it is the *narikh* or rate per bighá which he is to pay. This is the one subject which he thoroughly understands, and which he is most deeply interested in. It is most difficult to get him to consent to an enhancement unless he is satisfied he cannot resist. It is by watching test cases and the fate of his neighbour's litigation he satisfies himself that it is more to his interest to agree with his adversary than go to law. It is a cruel mercy to him to insist against his better judgment that he shall be ruined by litigation. If the raiyat is not given power to contract in these cases, it is difficult to know in what cases he ought to have the power. I do not think that 100 years of British rule has left the raiyat in so much less intelligent a condition than he was when we came, as to call for any such provision. I know well it is intended to protect him in contracting with one more powerful, but in this case I think this protection is illusory and the mischief very real.

"As regards the motion before us and the question of re-publication, I will only say that I regard the kernel of the Bill as sound, and the general object and scope of it as salutary, and that it should be proceeded with and necessary amendments made in Council. The recent modifications have been in the direction of meeting just objections of the zamíndárs, and I am not aware that any new matter has been introduced into it which would call for re-publication. In considering the desirability of future delay, the possibility of agitation among the raiyats should not be lost sight of.

"The hour is late, and I will reserve the remarks I have to make on various other sections for the Motions to amend those sections, which are very numerous."

The Council adjourned to Monday, the 2nd March, 1885.

*Extract from the Proceedings of the Council of the Governor General of India, dated 2nd March, 1885.*

## BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble SIR STEUART BAYLEY's Motion that the Reports of Select Committee on the Bill be taken into consideration was resumed this day.

The Hon'ble MR. GOODRICH said:—"It is right that I should, however briefly, express my opinion on the two questions to which each member of the Council must presently reply in the affirmative or negative.

"In the first place, the necessity of immediate regulation by law of the relations between landlord and tenant seems proved. In the second place, the Bill in question will limit the landlord's rights no further than the pubilc interest demands.

"My assent to the second proposition is, like the adhesion to the report of most of the members of the Select Committee, given subject to some reservations which I will briefly indicate.

"In the first place, the public interests will suffer if an improving landlord be not permitted to bar for a term of 30 years his tenants on land which he has reclaimed from beginning to acquire occupancy-rights therein. Mr. Hunter's amendment will meet this case, and will increase the chance of capital being applied to land.

"Under this Bill the enhancement of rent seems not permissible, on the ground that land let to a raiyat as *rural* land may have become *suburban* by the rise of a centre of commerce or industry, such as a new railway-junction, port, coal-mine or factory. Such cases will arise, and the landlord ought to be able to enhance on lands which, when let, were far from any market, but which have acquired a fancy value as accommodation-land by proximity to a new centre of population.

"The partial denial of the tenant's competency to contract must affect interests in various ways, not all perhaps now foreseen; but a practical consequence of the denial of the right to agree to an enhancement of more than two annas, excepting by suit, will be the infliction of the costs of a great mass of litigation upon the raiyats. I speak as one who has been Settlement-officer or Collector for the last 14 years, and can assure the Council that if the condition of the estate of zamíndárs resembles that of Government estates and of zamíndári estates in the Northern Districts of Madras, enquiry, such as Government, when landlord, everywhere asserts its right to conduct, will bring to light instances of lands fraudulently under-rated in almost every village.

"These questions will no doubt be fully discussed when the amendments to section 30 of the Bill are under consideration.

"I do not see any complaint from landlords on the score of the want of provisions empowering them to expropriate on terms assessed by a pancháyat occupancy-raiyats holding lands which the landlord needs for the execution of improvements, or for the erection of buildings or extension of premises which may be needed for the industrial development of his estate, or for necessary use in the working of mines or quarries. I think a prudent landlord would desire to possess this power. The State where it is landlord enjoys it, and it is for the public

interest that it should be given to the landlord under due safeguard. Whether the landlord should be allowed to do as the State is doing, and take up land needed for fuel and timber reserves, paying of course compensation to evicted tenants, is a somewhat larger question; if it has been raised in the course of the Committee's enquiry, I have missed it.

"Permit me, my Lord, to add that the value of the patient and well-directed labours of the Committee have been fully recognized in *Southern* India."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After the very gratifying testimony which the hon'ble member in charge of the Bill has borne to the value of my humble labours in the Select Committee, it would be ungracious in me to view with indifference the impatience expressed by the hon'ble member in the concluding part of his speech with any proposal for a postponement of the immediate passing of the Bill. But I should be lacking in the duty which I owe as a responsible member of Your Lordship's Legislative Council, and the duty which I owe to my countrymen, if I hesitated to beg Your Excellency and this hon'ble Council to pause before taking up the amended Bill for consideration for the purpose of passing it. Reserving to myself therefore the right of making a substantive motion on the subject, if necessary, I submit in the interests of all concerned that the amended Tenancy Bill should not be taken up for consideration by this hon'ble Council on the present motion of the hon'ble member in charge of the Bill. It is necessary to allow sufficient time to hon'ble members for studying the Bill, and the voluminous literature on the subject, before the Council might be expected to give to a discussion of its different provisions that intelligent consideration which its importance deserves, and also sufficient time to the public and to the parties interested for submitting their views and criticisms on the measure. The Bill has undergone considerable modifications since the Preliminary Report of the Select Committee was submitted last year; so many as 45 sections have been expunged, 13 new sections have been added, 21 sections have been thoroughly re-cast, and large modifications, both verbal and material, have been made in a number of other sections. The changes made in the Bill affect questions of paramount importance, and it cannot be expected that hon'ble members have been able in barely a fortnight's time to master the details of the revised Bill, and to judge of the justice and expediency of the various additions, omissions and modifications, considered by themselves and with reference to their bearings on the general scheme of legislation. This fact must have forcibly pressed itself upon Your Lordship's attention at the last sitting of the Council, when an hon'ble member, himself an eminent lawyer and the ornament of his profession, entertained serious doubts as to the correct meaning of the provision about enhancements of rent by registered contract, and put upon it a meaning contrary to that given to it by the hon'ble member in charge of the Bill. The time usually given to the gestation and maturation of important legislative measures is never thrown away. Considering that a much less important measure, the Transfer of Property Act, was before this hon'ble Council for full five years before it was passed in 1882, that there are even now three Bills, one to amend the law relating to Court-fees, the other to amend the law relating to Civil Courts, and the third to declare the extent of testamentary powers of Hindus and Bhuddists, which have been before the Council since 1881, I feel confident that hon'ble members will not grudge the time required to bring to a satisfactory termination a measure which immeasureably exceeds in importance any of these other measures, and which will, for weal or for woe, affect the destinies of more than 50 millions of the people of these provinces. The necessity of giving hon'ble members and the public further time for the consideration of the revised Bill is the greater as it proceeds on lines very different to those on which the Bill was modified and presented to the public last year; and nothing shows this more clearly than the Report of the Select Committee and the Dissents recorded by a large majority of the hon'ble members who sat on that Committee. Exception has been taken to the revised Bill on the ground that the rights it confers on non-occupancy-raiyats would practically convert them into occupancy-raiyats, that the restrictions it imposes on enhancement of rent would virtually make enhancement of rent more visionary than real, and that the power it gives the Local Government to order wholesale reductions of rent on grounds other than those mentioned in the Bill was opposed to the assurance given by Government when the Bill was introduced in Council that the *status quo* was not to be disturbed; while, on the other hand, it has been alleged that the Select Committee have omitted or materially modified several provisions which formed the keystone of the original scheme, and that the present outcome is scarcely a settlement of the many important questions relating to the law of landlord and tenant. In the face of such radical alterations in the Bill, it is due to those whose interests would be so greatly affected by the measure that they should be allowed an opportunity of examining the Bill in its present form, and of submitting to your Excellency in Council their views regarding it. It is for the observance of no technical form of procedure that I presume to make this proposal. The recommendation made by the Select Committee, that the revised Bill should not be re-published —a recommendation, by the way, which is wholly incompatible with the Report itself—amounts to a virtual denial to the people of a privilege which they have enjoyed since 1862—the privilege, namely, of being allowed an opportunity of submitting to Government their views and wishes regarding a legislative measure which vitally affects their interests. The question engaged the attention of Your Lordship's illustrious predecessor, and His Lordship, in communicating his views to the Government of Bengal through the Secretary in the Legislative Department, observed: 'He (the Governor General) is, on the contrary, fully sensible that it is the duty of the Government to give the largest practicable amount of publicity to legislative proceedings, and to afford the public every opportunity of examining them and expressing an opinion upon them and he is satisfied that more can be done in this respect than is done at

present.' But only a very limited publicity will have been given to it if the revised Bill be not translated in the different vernacular languages and published in the local Gazettes. Although the present measure is unquestionably the most important scheme of legislation that has come before this hon'ble Council since its establishment, a vast majority of the landholders and the whole body of raiyats will have no opportunity given them of examining the provisions of the revised Bill and offering their opinions upon them. In the face of the provisions contained in Bill No. II, the changes made in the sections regarding tenures and registration of transfers of tenures, the new limitations imposed upon enhancement of rent in Court and out of Court, the additional protection given to subletting, the power given to the Local Government to order a reduction of existing rents in certain cases on grounds other than those recognised by law, the new section regarding contracts and a number of other provisions would come as a surprise upon most landholders if the Bill be not re-published; while the raiyats would discover with disappointment that the long-promised provisions for attaching to land a legal status independent of the length of possession of the holder, for a free sale and mortgage of occupancy-holdings and for village tables-of-rates defining the maximum limits beyond which there could be no enhancement of rent, find no place therein. Your Lordship is well aware that the progress of the Bill is watched with the greatest anxiety and interest by all classes connected with the land in these provinces. Memorials adopted in crowded meetings of raiyats have poured in from different parts of the country, expressing their greatest consternation at the provisions for survey and record-of-rights and other sections of the Bill. They have even made bold to submit that, although actuated by the best intentions, the legislature, in its ignorance of their actual condition and relations with their landlords, will cause their ruin by the measure which it purposes to give them. Petitions have likewise poured in from landholders assembled at meetings in different parts of these provinces, submitting that there is no necessity whatever for substantive changes in the law on the lines on which the Bill has been drafted, that the Bill makes inroads upon vested rights of property guaranteed by law, and respected by preceding Administrations for nearly a century, that most of them have come to the possession of estates by purchase for large and valuable considerations, and that the proposed measure would, therefore, impose upon them, to use the words of John Stuart Mill, 'a penalty for having worked harder and saved more than their neighbours.' The landholders have repeatedly implored Your Lordship and Your Lordship's illustrious predecessor, with a persistency which has its apology only in the strength and sincerity of their convictions, to satisfy yourselves by the strictest enquiry that they have used with the greatest moderation their powers of eviction and settlement of rent, and that the condition of the raiyats in these provinces is one of growing prosperity. They have gone further. At a meeting held at the Town Hall on the 29th of December, 1883, perhaps the largest, certainly the most influential, ever held in this city, they unanimously carried a resolution which I shall read to your Lordship: 'That if the deprivation of the landholders of their just rights, inherited from generation to generation, confirmed by the Permanent Settlement, and consecrated by a century of British rule, be deemed essential to the welfare of the Tenantry, the Government be solicited to consider the justice of allowing the zamíndárs to surrender their estates on receiving such compensation in money as will, when invested in Government securities, produce a permanent return equal to their present income.' In compliance with that resolution they submitted a memorial to the Government of India. Could anything indicate more strongly their sense of the injustice involved in the measure and their feelings towards it? Your Lordship will be pleased to see that the landholders of Bengal and Bihár, numbering among them those whose manorial possessions date from days long anterior to the date of the Muhammadan conquest, have come forward in a body with a memorial declaring their readiness to forego the allurements of their position and social consideration, and to forego all hopes of future profit, and praying the Government of India to be allowed to surrender their estates in return for such security in money which would bring them their present income. It is not, however, the parties interested in the measure who alone consider the proposed changes in the present land law wholly unnecessary and altogether unsuited to the country. The hon'ble the Chief Justice of Bengal has, with the authority due to his eminent position, declared that he sees no 'such necessity as justifies the Government of Bengal in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the new Rent Bill.' And, again:—'It seems to me inconsistent with the good faith of the British nation, which the Native community have hitherto had reason to respect, to deprive the zamíndárs of the rights and position which they have acquired under the Permanent Settlement.' No less defined is the opinion of the hon'ble Justice Field, who by his masterly Digest of the Rent law, the prominent part he took in the labours of the Rent Commission, and the pre-Raphaelite minuteness with which he has delineated the land systems of different countries in his admirable work, has established a claim to speak with the highest authority on the subject. He says:—'I think we ought not to interfere with existing rights which have been the creation of our own administration operating upon the natural progress of the country. I think that no case has been made out for disturbing the landmarks of property. It must be borne in mind, as I have more than once pointed out, that a large proportion of the present proprietors are *bonâ fide* purchasers for valuable consideration, men who have paid their money for property sold at revenue sales, and in execution of the decrees of the Civil Courts, upon the faith of the existing state of things and the rights created by our laws and by our own action or inaction.' Other high officers of State have also denied the necessity of the measure now before this hon'ble Council. When the very necessity of the measure is denied by trusted and responsible officers of Government, the desirability of re-publishing the Bill with a view of giving the public and the parties interested an opportunity

of examining the material modifications made in it by the Select Committee becomes imperative. The only argument that has been advanced by the Government of Bengal and by the hon'ble Member in charge of the Bill in favour of hurrying it forward through the Council is one based on the desirability of setting at rest the unsettled condition of the public mind on this question, and of preventing the further growth of expectations in the minds of raiyats which are not destined to be realised. But where is the urgency of passing a measure which, to use His Honour the Lieutenant-Governor's own words contained in his dissent, 'inadequately meets the necessities of the case which called for legislation,' and which is scarcely 'a final settlement of the many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' The cause of this unsatisfactory termination of the labours of the Select Committee is not far to seek. Government have undertaken to make extensive amendments in the land laws of the country without having at their disposal facts and figures which alone could have shown whether they are necessary. I cannot more graphically describe the ignorance which prevails on the subject than in His Honour's own words. Speaking from his presidential chair at a meeting of the Bengal Council on the necessity of a patwarí law, His Honour is reported to have said:—'The object of the Bill is to get at the facts connected with the agricultural economy of the country. For the last ninety years we have been endeavouring without any success to arrive at these facts. Everybody complains; those who have been discussing the Rent Bill for the last six or seven years complain; gentlemen who come to India to make enquiries about it complain; the zamíndárs themselves, and the raiyats, if they could speak, also admit that neither the Government nor the zamíndár nor the raiyats have any positive knowledge of the facts which exist in regard to their relations to one another as regards their own property.' The argument based on what are called the necessities of the case falls, therefore to the ground. Is then the present law so very defective as to call for immediate action on the part of this hon'ble Council, notwithstanding the numerous modifications made by the Select Committee? I shall answer the question by reading to Your Lordship a statement from the despatch of the Government of India to Her Majesty's Secretary of State: 'A great part of the evils we describe,' they said, 'is unquestionably due to defects in administration rather than to defects in the law.' I lay the greatest stress on this statement as one which conclusively shows that there is no necessity whatever for passing the amended Bill without giving it due publicity beforehand.

"I would beg Your Lordship to view the question in another light. The Bill, as amended by the Select Committee, differs widely from the scheme of legislation submitted to Her Majesty's Secretary of State for India by the Government of India, and from the scheme which received the sanction of His Lordship. The scheme of the Government of India was summarised in 13 proposals mentioned in paragraph 108 of their despatch, which, with Your Lordship's permission, I shall examine shortly *seriatim*. The first was—'To restore the great body of the raiyats of Bengal to the position which they held under the ancient land law and custom of the country.' But, far from giving the raiyats the benefits of the ancient land laws, the Bill contemplates the repeal of the very sections of Regulation VIII of 1793 which define the relative rights of landholders and raiyats under the Permanent Settlement, and as regards customs no attempt whatever has been made to ascertain their nature and scope, or to formulate them into statutory provisions. The second proposal was—'To effect this restoration by declaring that the occupancy-right, carrying with it the privilege of a legal rent, shall attach to all raiyati land, and shall be enjoyed by all settled raiyats, nomad raiyats and under-raiyats being excluded.' The section of the Bill which contained this provision has been expunged, evidently in deference to the opinion of Her Majesty's Secretary of State. The third proposal was—'To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the parganá rates, subject to certain modifications, of which the chief relate to the framing of principles of assessment, to the securing the benefit of improvements to those who make them, to avoiding class restrictions in respect to the enhancement of rent, and to permitting applications in certain cases for a complete settlement of estates.' The Bill contains no provision whatever for the re-establishment of parganá rates, and the provisions permitting application for settlement of estates form part of the chapter on survey and record-of-rights. The 4th proposal was—'To empower the Local Government to maintain the Collector's tables-of-rates for periods extending from 10 to 30 years.' The provisions embodying this proposal have been expunged from the Bill. The 5th proposal was—'To declare that no contract shall debar a raiyat from acquiring a right of occupancy in raiyati land.' But, instead of restricting freedom of contract in one particular, the Bill provides for such restrictions in 13 different particulars. The 6th proposal was—'To render the occupancy-right transferable, not, indeed, by summary sale without decree, but by sale in execution of decree and by private sale.' This has been abandoned, and the matter left to custom as at present. The 7th proposal was—'Except as above, to impose no restriction on the mortgage of the right.' This also has been abandoned. The 8th proposal was—'To secure to occupancy and other raiyats due compensation for their improvements.' This I find is the first proposal to which due effect has been given in the Bill. The 9th proposal was—'To reserve to the Government the fullest power of interposition to prevent the growth of a pauperised cottier class.' This refers to the evils which might be brought about by the transfer of raiyati holdings by sale or mortgage to land-jobbers or money-lenders, and is therefore a mere corollary of the proposal regarding transfer of occupancy-holding which has been abandoned. The 10th proposal was—'To discourage sublettting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-raiyats.' The provisions of the amended Bill, on the contrary,

would encourage subletting and give great protection to sub-lessees. The 11th proposal was —'To provide for the more speedy realization of arrears of rent, when the rates are undisputed, by a modified method of distraint and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.' No summary procedure whatever for the speedy realization of rent has been given, and the institution of distraint has been virtually abolished. Instead of giving facilities for the recovery of rent, the Bill will immensely add to the difficulties of the landholders in this respect. It provides for meddling with the simplest transactions between the landlord and tenant, and makes a reference to the Courts and Revenue-officers obligatory for the ultimate regulation of every bargain relating to land; and whereas the present law provides for the aid of executive officers for only a single purpose, namely, measurement of land, there are more than 50 sections in the amended Bill which provide for executive interference on the part either of the Local Government or of their Revenue-officers. The inevitable effect of such provisions would be to annihilate the landholder's prestige in his estate, and thereby throw insuperable obstacles in the way of his recovering his rents. I shall read to Your Lordship in this connection the statements made before the Parliamentary Committee in 1882 by one who has denounced the wisdom of the Permanent Settlement in no measured terms—I mean James Mill. He says—'To draw from the raiyats the duties or contributions which they owe is well known to be a business of great detail and difficulty, requiring the strictest vigilance and most minute and persevering applications. Anything which strikes at the credit of the zamíndár, farmer or other functionary by which this duty is performed immediately increases the difficulty by encouraging the raiyat in the hope of defeating the demand by evasions, cunning, obstinacy or delay.' The 12th proposal was—'To authorise remissions or suspensions of rent where there has been a remission or suspension of land-revenue.' The Bill contains no such provision. The 13th and last proposal was—'To take up the question of introducing throughout Bengal the system of village records and field surveys, commencing with the Patna Division.' And this is the second out of 13 proposals which has been fully embodied in the amended Bill, although it was one of the difficulties attending the carrying out of which were clearly pointed out by Her Majesty's Secretary of State. The amended Bill, therefore, is in many important particulars at variance with the proposals which, with modifications in only one material point, received the sanction of Her Majesty's Secretary of State. Whether under such circumstances Your Lordship would consider it desirable to submit the amended Bill for the consideration of Her Majesty's Secretary of State for India is a question which it is for Your Lordship alone to decide, but I beg leave to submit that that question acquires additional importance from the fact that the landholders of Bengal and Bihár took express exception to the correctness of the statements of fact and law contained in the despatch of the Government of India on which the sanction of Her Majesty's Secretary of State to the introduction of the Bill in Council was based. That despatch assumed that 'the right of Government to fix at its own discretion the amounts of the rents upon the lands of the zamíndárs had never been denied or disputed,' whereas such a right is not only disputed, but it was distinctly disproved by the researches of Sir John Shore and disclaimed by the authors of the Permanent Settlement. The despatch declared that the rights of raiyats were not ascertained and defined at the time of the Permanent Settlement, whereas it is well known that those rights formed the subject of a searching enquiry for 20 years before the settlement was made, and that they were clearly defined in Regulation VIII of 1793. It gave extracts from the evidence of Holt Mackenzie before the Parliamentary Committee of 1832, showing the desirability of legislation on the subject of tenant-rights, but it ignored the important statement made by him that 'if done without their (zamíndárs') consent, we must, I apprehend, interfere by a new law, and be prepared to give the zamíndárs compensation or allow a reduction of revenue.' It declared that before 1859 the zamíndárs had no right to enhance rents, on the grounds of rise in price of produce, and that the institution of distraint was an offshoot of the Regulations—statements which require no formal refutation. These and other statements formed the subject of a memorial, dated the 17th of November, 1883, by the landholders of Bengal and Bihár to Her Majesty's Secretary of State; and His Lordship was pleased to observe, with reference thereto, that he 'can find nothing therein which would justify his assenting to its prayer that further legislative proceedings in connexion with the Bill should be stayed in order to enable him to re-consider the principles on which the Bill has been framed.' His Lordship adds that 'the most careful attention be given to the arguments of the memorialists when he receives *the Bill as finally settled.*' Your Lordship is well aware that as soon as a Bill has been passed by this hon'ble Council and has received the assent of Your Lordship, it ceases to be a Bill, and becomes, to use the language of the Indian Councils' Act, 'a Law or Regulation' notwithstanding the power of disallowance vested in Her Majesty's Secretary of State. The concluding portion, therefore, of His Lordship's remarks has raised a hope in the minds of the landholders that, before the Bill is taken up by this hon'ble Council for the purpose of passing, it would be sent to Her Majesty's Secretary of State for his consideration. Whatever foundation there might be for such a hope, I earnestly entreat Your Lordship and this Honourable Council to order a republication of the Bill before it is taken up for consideration, and that Your Lordship will not press forward, without further and due publicity, a measure which is at utter variance with the scheme which was sent up to Her Majesty's Secretary of State and with the instructions contained in the despatch of the Secretary of State, which the landholders look upon as a measure which in the absence of any necessity makes serious inroads upon vested rights of property, which the raiyats themselves regard with great consternation, and which landholders and raiyats alike, and not a few of the responsible officers of State, regard as a measure possessing a much greater claim than any

other measure that could be devised to the title of 'A Bill for the promotion of litigation in Bengal and Bihár.'"

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"My Lord, in this matter I propose to follow a moderate course, as I think it will be the best under the circumstances; for this I have my reasons, which I now propose to give. The Bill, together with the Select Committee's Report, as well as the dissents, have now been before us for two weeks, and a comparative study thereof, along with the Bill in its previous stages, has been a task of very great difficulty to me. The cause of this may be partly seen from the review that has been just submitted by the Hon'ble Sir Steuart Bayley. The hon'ble members who have followed him have had, with one exception, the advantage of being on the Select Committee for more than a year. If my remarks appear, therefore, somewhat cursory and disconnected, that circumstance arises from the necessities of the case. The mass of district papers, unindexed, has to be looked into each time from a differently placed standpoint. This is, however, not my only difficulty. Questions of principle have been introduced into the discussion in the Committee, and by different members of the Committee in their dissents; and they also arise in the papers circulated to the members of this Council and in the speeches of my hon'ble colleagues who have preceded me. In justice, therefore to myself, and to the Government of India, whom I am bound to help with such little light as I may be able to throw on the subject, and to their officers, who have worked hard to give their opinions as well as a variety of information about their respective districts, I must dwell for a few moments on the whole matter now before us.

"The legislature of India can only follow a safe and sound course. The question now before us directly affects 58 out of 217, or more than a fourth, of the revenue or judicial districts of British India, and indirectly about twice as many more. The Permanent Settlement is not in question now, and cannot be. I know, my Lord, I am here treading on delicate ground. But I have my views on the subject, and the Government of India has now finally approved of the principle. The Permanent Settlement is the sheet-anchor of the Government and the people, and we hope that when all the conditions are fulfilled (be it two, or be it three conditions), it will be introduced in its own time throughout the empire as the best political and economical measure that can be devised. Neither party to this present contest referred to it, except as a means of getting rid of their own difficulties. I allude to it now, because it has been introduced into the discussions both here and outside, and because these discussions have caused unrest for which I see no sufficient cause and which ought not to be lightly indulged in.

"The brief history of the present Bill may be thus given. In 1859 the Occupancy Act, was passed, recognising heritable but untransferable occupancy-right under certain circumstances. This was repealed in 1869 by a Bengal Council Act. Still the rent difficulty was not overcome. Zamíndárs could not recover rents. This was admitted by the Government of Bengal and by the Government of India in 1877-78. How is this got over? This is what the Divisional Commissioners say. The Commissioner for the Presidency Division says the zamíndárs had 'a good right to expect a very much more substantial relief' in regard to the recovery of rents. He holds that the Bill, if passed into law, is not likely to end in a satisfactory solution of the questions at issue. The Burdwan Commissioner is opposed in a manner more pronounced; so are those of Dacca and Chittagong; the latter would urge the non-extension of the measure to his district. The Commissioner of the Rajshahye Division is altogether opposed to the Bill, and thinks that while the raiyats of Bengal have been the stronger, and the Lieutenant-Governor in 1877 thought that a Bill for the proper recovery of rents was required, something else which was not then considered necessary has taken the place of the Rent Bill. He shows that rent-suits have increased by the grant of occupancy-rights, presumably to improvident people. This he shows by extracts from the report of the Deputy Commissioner of Darjeeling, formerly District Judge, &c., in the Sonthal Parganás.*

"Again, the Board of Revenue consider that the rents are lower than what they were in the beginning of the last century. And this would rather indicate that we must look chiefly to

* Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Parganás are instituted by money-lenders to recover advances made to raiyats, a large majority of whom have occupancy-rights, and the following figures for the year 1883 compare litigation in the three district just mentioned:—

| District. | Population. | Number of civil suits instituted. | Number of civil executions of decree instituted. |
|---|---|---|---|
| Sonthal Parganás | 1,568,093 | 7,351 | 4,253 |
| Dinagepore | 1,514,346 | 5,188 | 2,518 |
| Rajshahye | 1,338,638 | 2,674 | 1,930 |

Further on, he observes—

"I have no figures showing the number of civil suits in the Sonthal Parganás before such provisions as those in the Bill were introduced, but Mr. Oldham's statement that they greatly increase litigation seems sufficient.

"Lastly, Messrs. Livesay, Newbery, Ruddock, Dalton and Tute, and I would point to the following figures for 1883 as showing that litigation for the recovery of rent has not been decreased by the provisions of the Bill, though Mr Oldham here again thinks that without transferability there would not be nearly so many rent-suits, as fewer money-lenders who quarrel with the zamíndárs would become occupancy-raiyats:—

| District. | Number of rent-suits instituted. | Number of rent executions instituted |
|---|---|---|
| Sonthal Parganás | 3,892 | 2,805 |
| Dinagepore | 3,902 | 1,620 |
| Rajshahye | 1,978 | 853" |

a good rent-recovery law, abolition of illegal levies, and the partition of all partible properties for our help.

"In face of these facts, it is hard to say that the present Bill does provide additional facilities for the recovery of rents on which the payment of the *jamá* depends, and which was asked for and promised. After having studied the matter, I must say that to me the natural solution of rent difficulties appears to be the amendment of Act X of 1859 and not its repeal. We ought to have had complete statistics placed before us. I do not now advocate taking additional evidence. The reasons for this will be seen from my subsequent remarks. I know the Government of Bengal complain (letter dated 27th September, 1883) 'it is a misfortune that Bengal is so absolutely destitute of a record-of-rights.' And the hope is there expressed that when such record is established disputes will be impossible. I regret I cannot join in the expression of the latter hope. Disputes do not depend on the mere character of public records. Their causes are deeper and varied, and I may say that the greater the complexity of legislation the pressure of population on the means of subsistence, and, in some measure, the advance of modern civilisation itself, the larger will be the quantity of litigation. Historical experience completely supports me in this position. But my present complaint is of a more practical character, and relates to matters like eviction, distraint and others which we shall soon have to consider when going into detail. And the complaint is based upon the existence of the present law beginning from Regulation VIII of 1800 and coming up to Bengal Act VII of 1876. These laws were passed for securing some such statistics; and we ought to have máuzawár of village registers, and parganáwár or district registers, prepared under them. They would have given a large quantity of information about all the lands in each district, their situations, dimensions, holders and other particulars. From these, valuable information about the state of the people could have been gathered. I extract a specimen from the papers handed up by the Commissioner of the Patna Division, which show that within the last 80 years in the Gya district each estate has been split up into six and even more portions, and the number of proprietors has increased from 18 to 24-fold.[b]

"This is one example in regard to the case of the proprietors as the one I gave before is in regard to occupancy-tenants. As a very considerable number of these are said to exist in Bengal such information would have cleared up many difficulties in regard to recovery of rent and other matters. None of the dissents, so far as I can see, supplies any help in this direction. All zamíndárs could supply statistics, and ought, I think, to have been called upon to do so.

"Turning, therefore, necessarily to the divisional reports the state of matters is not quite reassuring. Some officers would rather work the present law more strictly and stop the illegal ábwábs. Others think the new law not at all necessary, and have proposed a provision empowering the Local Government to introduce it into any locality at its discretion.

"As far as I have been able to gather, the Commissioners oppose the Bill, first as unnecessary, and as going beyond the necessities of the case; and secondly, because it will not produce the results anticipated, but will injure vast interests without any compensating public good, and end in injurious litigation to the detriment of all parties. Some Collectors would have a moderate Bill. Such being the state of matters, I am sorry I am not able to follow the line taken up by those hon'ble colleagues who complain of the present Bill as not conceding all they claim for the tenants. The evidence of the District Officers is quite the other way, and I think it should not be set aside except on very strong grounds sufficient to override their weighty representations. His Honour the Lieutenant-Governor has a fourfold complaint against the Bill. The Hon'ble Mr. Reynolds thinks that, if anything, this is a law which cannot last long. The Hon'ble Mr. Amír Alí is also dissatisfied for the non-extension of occupancy-rights to classes who, the district authorities think, are not generally entitled to them; while the Hon'ble Mr. Gibbon thinks that complete transferability ought to have been enacted instead of its being left to Courts and custom. Again, I see a demand made in some quarters for what is called spirited legislation. To persons who ask for such legislation I again refer to the valuable reports of our district authorities. These are entirely opposed to such a course. Indeed, it seems to me that those who advocate such a course are hardly aware of the gravity of the occasion or the seriousness of results. Social and economic changes to be stable, must be slow, and must come from within. Does the evidence before us warrant such a proceeding? I am bound to say no. I would rather that the energy wasted on such attempts at seeking spirited legislation were more usefully employed in training cultivators, say, over given areas, to be more hard-working, self-reliant, truthful, God-fearing men. Their

[b] *Extract from enclosure of Commissioner's Report No. 484 R., dated 7th July, 1883, page 11 (note).*

"In the 24-Parganás, which are now comprised in the district of Gya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411 and the number of registered proprietors 20,453. In 80 years, therefore, each estate has, on an average, been split up into six, and, where there was formerly one proprietor, there are now 18 (Statistical Reporter, Volume XII, page 126). In 1790, there were 1,232 separate estates on the rent-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gya district, the number of estates on the rent-roll of the district amounted in 1870-71 to 6,075. The number of registered proprietors had increased to 37,800. Allowing for the increase in the size of the district by the addition of the Bihár sub-division, the number of estates under the Patna collectorate had quadrupled since the original assessment in 1790; and where there was formerly one proprietor, there are now probably 20 (Statistical Reporter, Volume XI, page 187). In the district of Tirhoot the figures are more marked In 1790 there were 1,321 estates held by 1,9 9 registered proprietors. In 1871 the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter Volume XIII, page 168). So long ago as 1789 Mr. Shore remarked on the insignificant size of the Bihár estates and the poverty of their owners. If sub-division has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy-holdings."

example would be more efficacious than a cart-load of invectives against vested interest of any kind, and will certainly produce a moral revolution which the Government above all others would be the first to recognize.

"The Government of India, in the Irrigation papers published in October, 1871, lay down a well-known caution in regard to the evils produced by periodic settlements. The principles which underlie those observations (*vide* Minute of Lord Mayo and other papers) appear to be that frequent interference in the private affairs of the people must produce evil. Here, on the contrary, the call upon the Government seems to be not to desist, but to come and interfere on almost every conceivable occasion, either through the Revenue or the Judicial Department. Nothing is to be settled, it would seem, out of Court and by private agency. I am sorry to see the unqualified assertion of such a principle. The Hon'ble Mr. Evans has already drawn attention to it, and I hope some substantial improvement may yet be made in this matter during the progress of the Bill.

"Again, the divisional authorities speak of considerable increase of establishments as one of the inevitable results of this legislation. Thus, in regard to Division Chittagong, the Commissioner says that litigation has increased since the last Act, and the tenants are evidently no better (see tables previously quoted). Evidently more complicated provisions will necessitate new establishments. In Rajshahye the new provision as to deposit of rents will require new establishments. In the Dacca Division, the demarcation of Khámár lands (which is considered objectionable there and elsewhere) will require heavy establishments. Dacca, my Lord, is in East Bengal, of the character of whose people the Hon'ble Mr. Evans has told us at the last meeting, and you may usefully consult the records.

"Taking yet another view of the case, our colleagues, the Hon'ble the Mahárájá of Durbhunga and the Hon'ble Peári Mohan Mukerji, are both dissatisfied with the whole work, and I believe it is now clear that the measure is not suited to the circumstances of Bihár. Will it benefit Bengal? I fear the evidence before me does not permit of my giving an unqualified answer in the affirmative. As I have said before, the Local Government has not supplied us with such statistics as the present laws enjoin the keeping of. Were it feasible and useful at this stage, I should have agreed to receive further evidence. But we are not now experimenting on inert matter which obeys certain natural laws, and with which you can repeat your experiments almost regardless of time. Such a method of experiment is not applicable to the subject before us. The state of the parties affected is, no doubt, undergoing some change; and yet it cannot be said that it has gone on so long as to have produced new combinations which the district officers have not already reported upon. And there is a certain subordinate official agency to which I would not now refer for further reports. I shall briefly explain what I mean by this observation. Thus a subordinate officer in Bengal submits a report which to me is quite a curiosity. He allows two days only to respectable gentlemen in his subdivision to submit their opinions. His own report is simply ludicrous. He has gone through the Bill, which, he says, provides necessary safeguards against the zamíndárs; he ventures to remark that more than sufficient privileges have been granted to the tenants; he would rather have seen a simple speedy mode of recovery of arrears and protection of tenants from illegal exactions and harrassing enhancements. When saying this he forgets that he already considered the Bill sufficient in these respects. As if, however, thinking he had been doing too much, he again condemns the Bill as tending to create multiplicity of intermediate tenure detrimental to actual cultivators of the soil, and as likely to prove of doubtful expediency and productive of litigation. Then comes the final touch. He says:—'*The Bill is a very complete one, and I am unable to offer any suggestion.*' The fact seems to be that the writer has no confidence in himself; how can he expect that others should confide in him?

"I am unable, my Lord, to say how the multiplication of such evidence will be of any value, and there are some more specimens of it on both sides. In fact, some raiyati petitioners in Orissa have already picked up a kind of phraseology which is scarcely parliamentary. I would, therefore, not be a party to ask for further evidence on this occasion. We cannot artificially isolate the subjects of our inquiry; and there have been no violent social or economic changes which can have altered the social and economical institutions of Bengal or the character of its people since the last district reports were framed within one year. If there were any such changes, the Local Government would doubtless have sent up all the materials to this Council.

"Pursuing the same subject and working at it from another point of view, we must see what we have really to do. The legislation of 1859, as amended in 1869, the proceedings of the Commission of 1881, and the discussions that have been now going on for three years, are all before us. And it seems to me the point that is being lost sight of is this. Are we now going to construe for the first time the Regulations of 1793, or those Regulations along with all amendments up to this date as viewed by the conduct of all parties concerned, namely, the Government, the landed proprietors and the tenants? A good deal has been said on both sides in regard to customs, but I take it, as a rule sanctioned by high authority, that a custom cannot be acknowledged as a basis of legislative action unless it has been consciously acted upon by the people as a rule of their conduct in the practices of every-day life. Unless it is so, I fail to see on what foundation it is to stand, and unless it has a foundation I should be chary of accepting it as a guide. Mr. Longfield, in his paper on 'The Revenue of Land in Ireland,' printed in the collection of essays published under the sanction of the Cobden Club, gives the following criterion for judging of property in land, and this I think may be safely taken as a guide in this discussion. He says:—

'The rights of the present owners do not depend upon the truth of any theory respecting the origin of pro-

prietorial rights. It is a rule of natural justice that says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land in every settled country. The present owners either themselves purchased the land or derived their rights under those who purchased it with the sanction of the community represented by the authority of the State. In many cases the State itself received part of the purchase-money from stamp duties on the purchase-deeds.'

"Again, a high authority has laid down (Kent on American Law) that to complete the right to property the right to the thing and the possession of the thing must be united.

"What, then, are we now to do? I have tried to give a brief view of the Bill of 1883 taken by some of the leading officers who are in the same position as I am now, but who have the actual work of the administration on their hands, but I fear I have not done them justice for want of time. If we examine the Bill, we have to see what mischiefs it will suppress, and what remedies will be advanced by it. Viewed in this light, it seems to me that the *khudkasht* raiyat should have been allowed to remain undisturbed. *Khudkasht* is a well-known term, and, if necessary, its equivalent might have been simultaneously given, but neither the 'settled raiyat' nor the 'resident raiyat' supplies its place. *Khudkasht* contains its own definition, and its attributes have a well-known history of their own.

"In respect to another subject I have a few words for this occasion. Though the present is not, strictly speaking, a revenue law, it will indirectly affect the revenue administration of the country, and it occurs to me that now that the subject has been exhausted threadbare, there ought to be no artificial restrictions on the quantity of zamíndári or raiyatwári holdings. If nine-tenths of Bengal are now under cultivation, and the remaining tenth is waste, it cannot affect any tenant if the proprietors of that waste land were allowed to work it, or to sell it or to contract with lease-hold tenants so as to reduce it into cultivation. That they have allowed it to remain uncultivated is a circumstance that has contributed to their own loss. That it has not been put on their rent-roll is, I conceive, because no rent has been derived by letting it, either by *batai* or cash rates. It therefore could not appear as cultivated land, either in their own or the Government registers, but why should there be a legislative prohibition to the proprietor making it his *khas* land, which it substantially is, and still more why its reclamation should be clogged with unnecessary restrictions is what I cannot see. When this and such like arguments are urged, one is referred by the Bengal Government to customs of former Governments for power to do so. On proper occasion, nobody advocates the non-exercise of superintending powers by our own Government within constitutional limits. But I am supported by high authority in protesting against an improper application of such examples. A constitutional and well-administered Government like our own can hardly set up the effete administration of Bengal in the 18th century as a model before us to copy. The provisions which are themselves cited in another part of the paper in connection with a similar example were repealed as being *obsolete* so long ago as 1876. The process of comparison is, therefore, I must say with great deference, logically vicious.

"If there was any fair scheme applicable to both sides allowing such land to be converted into raiyatwári holdings on a graduated scale to be agreed to on both sides, I should have been prepared to take such improvement as a good start and some tangible good might have been attempted. This portion of the Bill is not favourably reported upon in the district papers before us.

"In regard to homestead lands, I think, unless such lands are connected with the raiyat's agricultural land of the village, mere outsiders should not be allowed to hold them. This is, I believe, the customary law, and as the native community is situated, it is, I think, a salutary provision. Neither the landlord nor the cultivating raiyat should be permitted to dissociate the one from the other. Neighbours' quarrels in matters of adjoining lands are the worst in any country, but when to other difficulties social and religious ones are added, the cup overflows to the detriment of the whole village community. I trust, therefore, that this subject, along with others, will be duly considered. The papers referring to Bihár on this subject are important and deserve careful consideration.

"Another subject on which I am bound to express my opinion in this place is the restriction on the freedom of contracts generally. Over a wide country, containing 68 millions of inhabitants, the Government of India has doubtless had before it cases of localities or of a class or classes from which this liberty may, on due cause being shown, be sometimes withdrawn; and when we remember that under the infancy of the land law (and in several parts of the country the law as it stands now) does not permit of transfer of occupancy-holdings by contract, I may accept the present measure as a tentative solution of the difficulty so far as the tenants are concerned. But, on the other hand, with regard to waste lands on which nobody has settled, I should prefer all contracts being left free as heretofore, subject to the equitable jurisdiction of Courts of law. This view is also supported by the evidence of the district authorities. It occurs to me that while one side to this controversy would deny anything which will affect their rent-roll, the other cannot make up their minds to distinguish what is well known throughout India as *swamitwa* or right of dominion and tenancy. I am bound to say here at once that I agree with neither. The Bengal Revenue-officers do not support such a contention. Why is the legislature to attempt to square the zamíndár to fit into some new imaginary official circle?

"There are some other matters of which proper notice may be taken when they come up for discussion. While the Bill enacts several new provisions of law of questionable utility, and which will increase not only the work of district officers, but introduce a larger interference of State agency into the private affairs of the people than is either necessary or desirable, no positive provision, as it seems to me, has been made for relieving large classes both of tenants

and landholders, who I think ought to be relieved. It appears clear from the papers before us that sub-letting is the standing evil to which a large amount of the sufferings of the Bengal raiyat may fairly be attributed. This may be seen particularly by referring to paragraphs 14 to 17 of Mr. Cotton's memorandum, prepared for the President of the Select Committee on the Tenancy Bill, which, according to His Honour the Lieutenant-Governor, merits every attention, Mr. Cotton says:—

'In one respect, however, the cultivators of the soil undeniably are placed at a disadvantage by the practice of subletting, for it is a peculiarity of the system, although these tenures and under-tenures often comprise defined tracts of land, a common custom is to sublet certain aliquot shares of the whole superior tenure, and in consequence the tenants in any particular village of an estate are often required to pay their rents to two or more than two, and often to many different, landlords.'

"Although, as Mr. Cotton remarks, following the historian Hallam, that such a result is by no means unnatural, still that it is not a necessary result may, I think, be safely inferred from the papers before us. Thus the report of the Officiating Collector of Shahábád in regard to *guzáshta* holdings is in this connection valuable as showing that in places like Bhojpur those who cultivate their own lands on these tenures are very well off. I know that it is not correct to generalise from limited data, because property both acts and is acted upon by those who hold it; but if it is intended, on proper occasions, to help the creation of small properties with distinct reponsibilities and with provisions for actual sub-divisions amongst the sharers, I think opportunity may now be taken to enact some provisions which would be an improvement on the present state of things.

"As regards our present course, I would have voted for temporary relief being given to places like Mymensingh and Dacca by passing special measures to meet their cases. There is enough of material before us to support such a course. But this, I fear, would now be impracticable. It is now nearly six or seven years that the subject has been before either the Government of Bengal or the Government of India, including the deliberations of this Council, and we are given to understand that it will not conduce to the cause of good government if the matter be left in this state till the Council meets again here in December next. The Bengal Government as represented in this Council does not ask for delay in the minutes now before us, although those minutes do not accept the present Bill as a final settlement. The proprietory interest, as represented by the Hon'ble the Mahárájá of Durbhunga and Hon'ble Bábú Peári Mohan, request re-publication, and if this were not a virtual postponement for a whole year I should have voted for that course. As it is, any extension of time which can conveniently be allowed to them may, I think, be granted; but if that cannot be, then I hope the Council will consider and discuss all that has to be said *pro* and *con.* for all the interests concerned are equal objects of conservation to the British Government. While I have given my reasons for the course I am going to adopt, I regret I am not disposed to concur in the remarks either here or outside in regard to the opposition of our zamíndár colleagues. The case of the Mahárájá of Durbhunga is as good as proved. If it were not, I still think both he and the Hon'ble Bábú Peári Mohan are bound to state all their objections. The district authorities show what they will suffer, and it is quite natural they should feel it; and if they do, I think we ought to be glad to hear them. They are representatives of a very large and important class. I do not think that it will be just to tax the present landed proprietors of Bengal with the shortcomings, if any, of their predecessors, because I think the progress of legislation as well as the papers now before us make it pretty clear that on the whole they have done their work well. But now comes another agency into greater prominence, and with the light which is thrown on their condition from both sides, it is clear that neither has arrived at its goal.

"What then are we to do? The Bengal Government calls for immediate action. This is supported by the hon'ble member in charge, who I feel sure will not rush into any extreme course. A few of the district papers move on the same lines. Though not inclined in favour of the Bill of 1883, they counsel legislation under some of the heads laid down in the Bill on which they favour us with their remarks. My duty therefore is clear; that is to make the most of what we have and not postpone for another year.

"My Lord, I have already taken more time than I had proposed to myself. I am quite sensible of the imperfections which there may be in my work, but I can assure Your Lordship and my colleagues that I have devoted more hours to it than one is usually credited with doing in this climate. If there are any sides of the question on which light can be thrown, nobody would be more glad to learn than myself, but I have a right to say that I have done my best under the circumstances, and having made these remarks I beg to say that I shall vote with the hon'ble member in charge for the further consideration of the Bill in detail."

The Hon'ble Mr. REYNOLDS said:—"I desire to support the motion that the Council should now proceed to take this Bill into consideration. I do not mean by this to express my approval of all the provisions of the Bill. The dissent which I have recorded from the Report of the Select Committee is sufficient to show that in some particulars of great importance the Bill seems to me to fall far short of being an adequate or a satisfactory measure. But, in my opinion, the faults of the Bill lie mainly on the side of defect. It fails to supply any sufficient check on the improper exercise of the extensive powers which puts into the hands of the landlords. It must be supplemented by further legislation for the protection and security of the tenant, and I have little doubt that the experience of a few years will show the necessity for such legislation to be imperative. Till that protection is afforded, I can only regard the Bill as a well-intended, but incomplete, measure; a measure to be praised rather for what it aims at, than for what it effects; a measure marking, it may be, a stage upon the journey, but

leaving the country still a long distance from the desired goal. Holding these views, I still think that I can consistently vote in favour of the motion before the Council. If the principles which the Bill as originally introduced was intended to establish had been repudiated, or its objects had been formally abandoned, I should look upon the question in a very different light. In that case, instead of voting to take the Bill into consideration I might have been more disposed to vote for dropping it altogether. But the difference between myself and the hon'ble member in charge of the Bill is not of this serious character. It is a difference of degree, not a difference of kind. I do not understand that the hon'ble member has, in and way, receded from the position which he took up in his speech on the 13th of March, 1883, when the Bill was referred to the Select Committee. He apparently believes that the Bill in its present form redeems the pledges which were given when it was introduced, or at least that it goes as far in that direction as is justified by the evidence laid before the Select Committee. In this belief I do not agree, but this need not prevent my consenting to discuss the details of the Bill as an instalment of the legislation necessary to a final settlement of the question. An affirmative vote on this motion seems to me to imply that it is desirable to legislate upon the subject, and that the provisions of the amended Bill do not go beyond the limits of the power of interference which the Government reserved to itself at the settlement of 1793; and further, that the general lines upon which the Bill is drawn, and the objects at which it aims, are just and reasonable, and in accordance with the wants of the country. It seems to me that the Bill, insufficient as I consider it to be, does satisfy these conditions, and I am, therefore, prepared to assent to its being taken into consideration by the Council.

"I willingly and thankfully acknowledge that the Bill contains many valuable improvements upon the present law. It lays down principles to guide the Courts in determining whether a tenant is a tenure-holder or a raiyat: it provides a simple procedure for the registration of the transfer of tenures: it does something towards strengthening the position of the occupancy-raiyat: it simplifies and facilitates suits for the enhancement of rent: it establishes an admirable system for the commutation of rents payable in kind: it prescribes excellent rules for instalments, receipts and interest on arrears: it encourages improvements: and it protects the interests, both of the parties and the general public, in cases of disputes between co-sharers. The chapter on the preparation of a record-of-rights contains provisions which will be equally useful to landlords and to tenants. The sections on the record of private lands will put a stop to that illegal misappropriation of village lands as khámár which has been too often practised in Bihár. The rules for the protection of sub-tenants when the interest of the superior holder is relinquished or transferred, the restrictions upon such contracts as are opposed to the objects of the law, the power given to apply for a judicial determination of the incidents of a tenancy—all these are, in my opinion, points in which the Bill applies useful and equitable remedies to evils for which the existing law does not adequately provide.

"It is therefore the more to be regretted that a measure which contains so much that is good should be marred by defects which not merely detract from its usefulness, but which may result in aggravating the mischief which the Bill is intended to counteract, and in turning what should be the raiyat's protecting shield into an instrument of exaction and oppression. The opportunity has again been afforded us which was neglected in 1793 and misused in 1859, the opportunity of placing the relations of landlord and tenant on a secure and permanent basis; of defining the rights and obligations of each; of ensuring, in accordance with in memorial usage, fixity of tenure at fair rents to all cultivators of the village lands; and of facilitating the landlord's recovery of his dues so long as he restricts his demands upon the tenant within equitable limits. It is to be feared that, once more, the opportunity will be suffered to pass by. This Bill, by confining the right of occupancy to the village in which the tenant has held land for 12 continuous years, fails to give the occupancy-raiyat that fixity of tenure to which he is justly entitled. These sections relating to the enhancement of an occupancy-raiyat's rent give the landlords a sure and speedy means of enhancing rents, without providing any sufficient check on the levy of further enhancements in those arrears in which rents are already as high as the land can properly bear.

"If the protection given to the occupancy-raiyat is thus insufficient, the defects of the Bill, as regards the non-occupancy-raiyat, are still more conspicuous, and are likely to lead to results still more deplorable. The non-occupancy-raiyat is entitled to full consideration at our hands, for he is really the offspring of our own legislation. We have been told time after time, by the landlords and their advocates, that the occupancy-raiyat is the creature of Act X of 1859. Never was a statement more inaccurate, or indeed more directly opposed to the fact. The occupancy-raiyat dates from a time whereof the memory of man runneth not to the contrary. But never till 1859 was it the law in Bengal, that a resident raiyat cultivating village lands to which he had been duly admitted, which he had held for ten or eleven years, and for which he was willing to pay the established rent, could be ejected from his holding at the pleasure of his landlord by a mere notice to quit. It is the non-occupancy-raiyat who is really the creature of Act X of 1859.

"The Bill not only does practically nothing for this class of tenants, but in some respects it puts them in a worse position than they occupy now. It was left to the Courts to deduce from Act X of 1859 the doctrine of the landlord's power to eject, and the deduction seems to have been made for the first time in 1874, but it is now proposed to embody in the Statute-book a distinct recognition of this power. Under the present law, the zamíndár can prevent the accrual of the right of occupancy by merely shifting the raiyat from one field to another: under the Bill, he will be tempted to eviet him from the village altogether. A tenant so completely at the mercy of his landlord, must evidently submit to any demand of rent which the

latter may think fit to make. Even if he is allowed to acquire a right of occupancy, he will only be permitted to do so on payment of an excessive rental: and, under the operation of the rule regarding the prevailing rate, this excessive rental will be used as a lever to raise the rents of all occupancy-raiyats in the village. The evil consequences of leaving the class of non-occupancy-raiyats unprotected were clearly foreseen and forcibly pointed out by the Government of India in its despatch of the 17th October, 1882, to the Secretary of State: and it is, therefore, a matter for surprise as well as for regret that the amendment Bill leaves such raiyats practically without any protection either as to the amount of their rent or as to the security of their tenure of the land. The established principle referred to by the Court of Directors in 1792, as the maxim alike of the Moghul and of the British Governments, that 'the cultivator of the soil duly paying his rent should not be dispossessed of the land he occupies,' seems to have been lost sight of. In a previous passage of the same letter, the Court of Directors had plainly declared that the object of legislative interference by the Government between landlord and tenant should be 'to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions.' But this Bill allows the raiyat to be ejected at the mere caprice of his landlord and it gives him no adequate security against the most exorbitant demands of rent. The extension of the right of occupancy to the great mass of settled cultivators has been put forward, time after time, by successive authorities as one of the principal objects at which legislation on the rent-question should aim. The Famine Commission and the Government of Bengal have urged, in language as strong as it is possible to use, the great importance of this extension: the Rent Commission proposed to give a qualified right after only three years' occupation: the Government of India, in 1882, went even further than this, and recommended that the right of occupancy should be declared inherent in the status of every cultivator of raiyatí land. The hon'ble member in charge of the Bill is still prepared, I imagine, to maintain the principles laid down in that despatch to the Secretary of State. But I would ask him to consider what extension of the right of occupancy is to be looked for from a measure which leaves the landlords the fullest power to prevent its accrual over all lands in which it has not already been acquired, and over lands in which it now exists, but which may hereafter revert to the landlords by purchase, by death without heirs, or by abandonment by the occupancy-tenant. I would ask him to ponder the serious warning with which the 8th paragraph of that despatch concludes, that 'the old series of litigation, enhancement, and ejection will re-commence; and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.' I would ask him to reflect that out of 67,578 occupancy-holdings transferred by private sale during the past year, no less than 16,500, or about 25 per cent., were purchased by zamíndárs or traders: and then to say whether the warning conveyed in that paragraph is not likely to be more than justified by the working of this Bill.

"These, then, are the faults I find in the Bill: first, that though it puts the occupancy-raiyat in a stronger position than he now holds, it does not give him complete security of tenure: secondly, that it greatly increases the facilities for the enhancement of his rent, without laying down any ultimate limit beyond which enhancement is in no case to go: and thirdly, that the protection it gives the non-occupancy-raiyat is altogether inadequate. The hon'ble member in charge of the Bill, to whom I listened with the greatest admiration, and whose speech was equally distinguished by the lucidity of its statements and the fairness of its arguments, will not deny that in all these three particulars the Bill in its present form is a far weaker measure than the Bill which was referred to the Select Committee. He has contended, it is true, that the Bill is a much better measure than I have represented it to be. He noticed, in particular, the points of the settled raiyat, the prevailing rate, the gross-produce limit, and the position of the non-occupancy-raiyat; and on all these points I am willing to admit that he adduced reasons of considerable force in favour of those conclusions of the Select Committee which are embodied in the Bill. As the motion actually before us is merely the preliminary motion that the Bill should be taken into consideration, I do not desire to discuss these questions in detail on the present occasion. Each of them will come before the Council in connexion with amendments, of which notice has already been given. I will only say now that, whatever may be urged in support of the Select Committee's decision upon each of these points, what the Council has to look at is the effect of the Bill as a whole. There may have been unanswerable reasons for maintaining the prevailing rate, or for striking out the gross-produce limit, but the general result of the rejection of the proposals of the Bengal Government on these and other cognate matters has been, in my opinion, to leave the raiyat without adequate protection for his rights. And when the hon'ble member quotes me as an authority for the abandonment of the provisions for compensation for disturbance, I think it only fair to myself to point out that I objected to those provisions, because I thought compensation for disturbance an insufficient check. I thought if probable that the raiyat would not take his compensation and go, but would submit to the enhancement and remain. My objections are not disposed of by the removal of the check, without the substitution of anything more effective in its place. On the whole, I am not prepared to withdraw the opinion I have already expressed in my recorded dissent, that the Bill gives the landlords a power which is not sufficiently controlled or limited, and that the exercise of this power will naturally lead to results inconsistent with those rights of the tenants which the Bill was designed to maintain, and disastrous to the agricultural interests of the country.

"The nature of the further legislation, which will be necessary to supplement and complete this Bill, is a point upon which I do not propose to touch to-day. I shall have an oppor-

tunity of noticing it hereafter, when the motion for the passing of the Bill is submitted to the Council. At present, I desire only to make it clear that my assent to the proposal to take the Bill into consideration does not imply my acceptance of the Bill as containing any measure of completeness or finality. With this understanding, I am prepared to vote for the motion, and I would add that I see no advantage in the proposal that the discussion should be deferred, or the Bill re-published. The Bill, as published 12 months ago, is substantially the same measure as that which comes before the Council to-day. It has been subjected to the fullest criticism, and those who think it goes too far, equally with those who think it does not go far enough, are not in the least likely to modify their views by putting off the debate for a few weeks or months. Experience alone will show how the measure will work, and in what direction its amendment will be necessary. To the results of that experience I am content to appeal. No one, indeed, would rejoice more than myself if my apprehensions should prove to be unfounded. But it is my earnest conviction that this Bill will not prove a final or a satisfactory measure; and, as the Select Committee have not consented to introduce the safeguards which I believe essential to its success, I think it better for the country that the question should not remain in its present state of debate and suspense, but that the measure which commends itself to the majority of the Council should come into early operation, and should be tried by the logic of facts and by the test of results."

The Hon'ble Mr. Hunter said:—"My Lord, I am one of the members of the Select Committee who have not been able to give an unqualified support to this measure. On the second reading of the Bill, two years ago, I felt it my duty to take exception to three of its main proposals. I objected, in the first place, to interfering by statute with the landlord's right to make his own bargain with a new tenant: in the second place, to the produce limit on rent: and in the third place, to the excessive compensation for disturbance. During the passage of the Bill through the Select Committee, these provisions have been expunged, new proposals which seemed to me equally objectionable have been rejected, and it is with much regret that I find myself still compelled to dissent from the report of a body, whose fairness I recognise, and one which has, in my opinion, fought a good fight against extreme proposals from both sides. My regret has been increased by hearing an hon'ble member make use of my dissent in support of a motion which raises the general issue as to the necessity of legislation, and which would postpone legislation for the present. I myself do not understand how any one who listened to the statements made in this Council on the 12th of March, 1883, on behalf of the Government of Bengal and on behalf of the Government of India, can think it either right or expedient that that general issue should now be raised. The Bill came before the Council with the assurances of three Lieutenant-Governors of Bengal that a legislative adjustment of the land question had become necessary for the tranquillity and good government of these provinces. These assurances were supported by the opinion of the most experienced district officers and by a great body of information collected by a Special Commission. The Government of India had, after further inquiry, given its deliberate assent to the necessity for legislation—an assent which carried with it the sanction of the Secretary of State. But if doubts still remained in the mind of any member as to the sufficiency of the grounds on which the necessity for legislation had been admitted, I think that the papers placed before us in the Select Committee must have completely removed those doubts. I will refer to only one such paper. Mr. Finucane shows that in a tract in which the rents were excessive, over one-fifth of the cultivators absconded into Nepaul in the course of two years; and that nearly a fifth of the arable land went out of cultivation. From another tract, in which the rents were still more excessive, one-third of the population absconded, and an almost similar proportion of the land became waste. Why did these British subjects, some 30,000 in number I am told, fly across our frontier to Native territory? Mr. Finucane's report supplies an answer. 'I noticed people,' he says—'by hundreds, sometimes digging in the field for roots which they gathered for the purpose of eating them. Every year people eke out the scanty meals that their means allow them to provide for themselves by digging for roots. The circumstance attracts no special attention. It is not necessarily a sign that the poorer classes are in distress. And yet I can vouch for the fact from personal experience that the bread or cake made of this root (*chechaur*) is the most disgusting compound a man can put into his mouth: and medical officers have pronounced it to be most indigestible, utterly devoid of any nourishment, and provocative of the most irritating bowel complaints.' My Lord, this description, I am thankful to say, applies only to particular tracts. I do not wish to generalise from it: still less do I desire to infer from it that the Bill now before the Council provides the only or the best remedies for the agricultural distress which Mr. Finucane's report reveals. But I do say that even if we were to reject the repeated assurances by the Government responsible for the tranquillity of the country, and if we were to question its assertion that legislation is now necessary for the preservation of peace, yet these and similar statements before the Council most clearly show that legislative interference is necessary in the interests of humanity. Whatever may be my differences in points of detail in regard to the particular remedies proposed, and steady as my opposition has been to what I considered extreme proposals for curtailing the landlord's rights, I think that the native landholders in now raising the general issue as to the necessity for legislation, have adopted a course indefensible in itself, and calculated to do a moral injury to their cause.

"As regards their specific contention for the republication of the Bill, I would ask them what new points are there in the revised measure, which have not already been submitted during a full year to public discussion by the preliminary report of the Select Committee, or by the letter of the Government of Bengal six months ago? I have listened carefully to the

speeches of the Hon'ble Peári Mohan Mukerji and the Mahárájá of Darbhungá—in the expectation that some such points would be specified. I have heard that 13 out of the 196 sections did not appear in the Draft Bill. But I have not heard any really new point specified. The truth is that the work of the Select Committee during its second session has chiefly been to reject the extreme proposals, after those proposals had been duly submitted to public discussion by its preliminary Report; and not to insert new provisions of its own. Where a new provision has found entrance into the Bill, it has almost invariably been framed upon old lines. The result of the republication of the Bill, would now be, not to submit new points to public discussion, but to resubmit to public discussion the decisions of the Select Committee upon the old points which have during the past year been amply and publicly discussed.

"My Lord, I have thought it right to state at some length my objections to raising afresh the general issue as to the necessity for legislation, because I shall have to raise several particular issues in regard to the exact form of legislation now proposed. First of all, while I believe that some legislation has become necessary, I do not think that the Council has been placed in the best position to effectively legislate. For, as I have urged in my written dissent, the legislature is asked to deal with the entire relations of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. I agree with the hon'ble member in charge of the Bill that the process of hearing and cross-examining witnesses in the various districts might have led to agitation. But the absence of cross-examined evidence has, in my opinion, intensified and prolonged the present far more serious agitation. In a country where the expression of opinion is unrestrained, and where each of the great interests is powerfully represented in the Press, it is impossible to enter on a measure affecting the rights of large and influential classes without exciting opposition and agitation of a most determined character. The best way to encounter such an agitation is to meet it with facts, and the examination of witnesses is the ordinary and only practicable procedure for collecting a body of facts which can be relied on in a conflict of interests, such as is involved in this Bill. I agree with the Hon'ble Sir Steuart Bayley, however, that when the measure reached the Select Committee, the time had gone past for a peripatetic Commission to take evidence; and I also think that, with the agitation now at full flood, such a Commission would find it very difficult to arrive at the truth.

"If I believed it likely that a delay would enable the Government to collect really important information, or would add materially to the data now before the Council, I should vote for the postponement. But whence is such information to come? If one thing has been made clear by the labours of the Select Committee, it is the extremely meagre and uncertain character of rural statistics in these provinces. The Bengal Government is endeavouring by legislation in its own Council to provide machinery for increasing its knowledge, and for dealing with the administrative difficulties to what insufficient knowledge has given rise. But several years must elapse before the machinery can be brought into working order and produce practical results. Meanwhile we have exhausted all the sources of information which are at present available to the Bengal Government. It has been my business, during the past fifteen years, to acquaint myself with the statistics of each province of India, and to study the sources from which they are derived. More than any other officer of Your Lordship's Government I have had to deplore the inadequacy of the information which we possess for Bengal. I may, therefore, be permitted to say that all the classes of really ascertained facts known to me in regard to Bengal have been fairly used and are now exhausted. I hope that before many years elapse, those facts will have been supplemented by a mass of new information obtained under the Acts now passing through the Bengal Council. But I see no possibility of obtaining that new information within any period, say of six months, during which this Bill could be postponed. Statistics cannot be run up in a night, unless indeed they are to tumble down next morning. If the Bengal Government were to attempt, in the midst of the present agitation, to institute a statistical enquiry on a large scale throughout Bengal, it would merely be deceiving itself and misleading the public. We have not only exhausted all sources of information now available, but we have heard the views of every class and interest which claims to be affected by the measure. A further postponement would prolong the rural agitation in a most undesirable manner: but it would yield no compensating body of new facts.

"The Select Committee has with much patience threaded its way through the conflicting statements submitted to it. The result has in some cases been the rejection of what seemed to me useful proposals. For example, the sale of the occupancy-tenure, which had at one time the approval of the Select Committee, no longer finds a place in the Bill. It appeared expedient to legalise such sales, not on theoretical grounds, much less from an abstract love of any three letters of the alphabet, but simply because such sales had grown into an established custom in Bengal, and because it would save litigation and prevent extortion, if we gave to such transactions the express recognition of the law. But when the incidents to which the custom was subject came to be discussed, there was no evidence to guide the Committee. Some members maintained that the custom of sale was subject to a fee to the landlord for registering the transfer. Others contested this position; one member thought the fee should be as high as 25 per cent., another thought that there should be no fee at all. In the end the right of sale was dropped out of the Bill, chiefly because no agreement could be come to in respect to the conditions to which the sale should be subject. I regret this result, and I shall give my support to the Hon'ble Mr. Amír Alí's amendment for re-introducing the provision, if he sees his way to attach a substantial fee for the landlord to the exercise of the right by tenant. The position of the hon'ble gentleman and myself in this matter affords a good illustration of our position and that of several other dissenting members in regard to many provisions in the Bill. We dissent not because we

disapprove of the measure as a whole, but because each of us wanted to get a little more of his own way in the Bill than he has been able to get. If any one infers from the number of dissents that a majority of the Select Committee is opposed to the Bill as a whole, he will be very completely undeceived when the votes on the motion at present before the Council are recorded.

"I regret, however, to have to call attention to what I conceive to be a fundamental source of weakness in the Bill, arising from its attempt to apply one set of minute provisions for the regulation of rent to two provinces in which the relations of landlord and tenant are so widely dissimilar as in Bengal and Bíhár. In Bíhár, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator. Throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the profound economic differences between agricultural relations in Bengal and in Bihár find no recognition in the Bill. Throughout the two years' labour of the Select Committee we were perpetually struggling in the meshes of this fundamental error. In my opinion, the result has been to tie our hands in providing perfectly effective remedies for the tenant in Bihár and for the landlord in parts of Bengal. The Bill has accomplished something for both, but not enough for either.

"It is also, I think, defective in another important respect. The root of the agrarian difficulty in Bengal is over-population. 'I consider,' says Mr. Finucane in describing the wretched condition of the Bihár peasantry, 'that it is only the redundant population of Bihár which has brought things to this pass,' and the minute sub-division of estates 'creating a number of proprietors whose name is legion.' The Bill attempts to alleviate the evils arising to the peasantry from a too keen competition for the land by placing restrictions on the enhancement of rent. Such restrictions, when effective, are necessarily made by curtailing the rights of the landlords. But there are two other means of dealing with over population, namely, the reclamation of waste lands, and the shifting of the people to unoccupied tracts. With regard to reclamation of waste lands, I shall, in submitting an amendment to the Council, shew that the Bill not only gives no new encouragement for such undertakings, but that it places the proprietor, who himself reclaims waste lands, in a worse position than before. With regard to assisted migrations or shifting of the people to unoccupied tracts, I acknowledge that it would be unreasonable to expect any specific provisions in the present Bill. But I hope that the Government may see its way to reconsider this aspect of the question. The waste land uncultivated but capable of cultivation in Bengal and the two provinces immediately adjoining on the east and west is equal to the whole land and under crops in Great Britain and Ireland, and large areas of this waste land are to be found close on the outskirts of some of the most over-crowded tracts, especially Bihár. The experiment which the Government has hitherto made to promote and assist the migration of the people to unoccupied or sparsely inhabited tracts have been few in number and inconclusive as to their results. But such enterprises have been conducted on a considerable scale by private enterprise in several parts of the country. I shall cite only two such undertakings. In Birdpur, in the Gorakpur District, over 23,000 persons have been settled on 250 reclaimed villages, on a tract which forty years ago was swamped and heavy jungle; while the success of the new Sontal colonies in Assam shows how much can be effected by State aid combined with private organization. The Government has rendered migration possible by opening up railways, but experience shows that the mere possibility of transport does not suffice to make the people move on. This Bill, in attempting to mitigate the evils of over-population by placing restrictions on the enhancement of rents, tries to remedy what is really a national difficulty at the cost of a particular class. I admit that the legislature is justified in regulating the monopoly in land which over-crowding and over-competition for holdings create in favour of the landlords. The permanent remedy for over-population is not, however, to be found in artificial restrictions upon rent, but in adding to the cultivated area, by encouraging the reclamation of waste lands and by assisting the people to migrate to unoccupied tracts

"While, however, I believe that the Bill fails to do all that it might have accomplished, owing to the absence of properly-sifted evidence, and to the fundamental error of attempting to prescribe one set of regulations for two altogether dissimilar provinces, I acknowledge that it does much towards the solution of the questions with which it deals. In the first place, it makes the old law a reality—a reality for the tenants as regards the enforcement of their occupancy-rights within the entire village; a reality for the landlords as regards the enhancement of rent, when such an enhancement can be equitably claimed; and a reality for both landlord and tenant as regards the ascertainment of rent actually due. I am no unqualified admirer of the Bill; but if it had done nothing more than give reality to the uncertain and unworkable provisions of the old law, I should consider myself bound to give it, as a whole, my support. It has been able, however, to do much more than this. It has developed the occupancy-cultivator with all his old uncertainties as to the maintenance of his rights into the settled raiyat. It has given to the settled raiyat a clearly-defined area within which no man can defeat his right to hold his land as long as he pays a fair rent. It has placed a limit to the enhancement of his rent out of Court, and it has given him what amounts to a statutory lease for fifteen years if his rent is enhanced by a suit in Court. Of not less importance are the provisions which render null and void any contract which would prevent the growth of the right of occupancy, or interfere with the enjoyment of the incidents of that right. To the ordinary cultivator it has also secured advantages of great value. In the first place, it gives to every cultivator the presumption that he possesses the right of occupancy in his holding, until the contrary is shown. This presumption is in strict accordance with the facts, if, as has

been stated and not contested, that something like nine-tenths of the cultivators of Bengal are at present entitled to claim those rights. The importance of this presumption has been well shown by the hon'ble Mr. Evans in the present debate: and so far as the ordinary cultivator is concerned, the Bill would, in my opinion, have justified its existence, if it had done nothing more than create this presumption in his favour. It has also, however, provided safeguards against his sudden ejectment from his holding, and against the unreasonable enhancement of his rent. Unless the ordinary cultivator himself consents to an enhancement, his rent can only be raised by a suit in which the Court shall determine what is a fair and equitable rent. The rent thus determined cannot be again enhanced for a term of five years; so that, while the Bill practically secures judicial leases for fifteen years to the occupancy-tenant. it also provides what amounts to a judicial lease for five years for the ordinary cultivator.

"My Lord, these are substantial changes in the existing law in favour of the cultivator. We may regret that these changes afford no general protection to the under-tenant, and no special remedy for the particular circumstances of Bihár. But we have the satisfaction of knowing that every one of the changes in favour of the cultivator which the present Bill makes in the old law is justified by the facts, and that the Bill, as revised by the Select Committee errs by defect rather than by excess. The Hon'ble Sir Steuart Bayley has very fully shown what the measure effects for the other great class affected by it, namely, the landholders. I acknowledge the increased facilities which the Bill provides for the realisation of rent by extending the system of registration, and by creating a new procedure for the record-of-rights and settlement of rents But just as I regret that the Bill fails to make adequate provisions for the special needs of the cultivator in Bihár, so I regret that it fails to give an adequate response to the demands of the landholders in Eastern Bengal. I do not think that the Bill can be accepted as a final settlement of the land difficulty in either province. I hope that amendments will be carried in this Council which will render the Bill more effective in the hands of both the landholders and the cultivator. But I accept the measure as an important and a valuable instalment towards the adjustment of land rights in Bengal, and I believe that, on the whole, it advances as far towards a final settlement of those rights as we are at present justified in going either by the condition of the country or by the ascertained facts."

The Hon'ble Mr. Amír Alí said:—"My Lord,—My views respecting this Bill are sufficiently indicated in the dissent which I have recorded, and were it not for a feeling that I am bound to lay before this Council at some length the reasons which induce me to support the present motion I should have abstained from trespassing on the time of this Council. If I prove too lengthy, my apology will be the proverbial long-windedness of the profession to which I belong.

"I had hoped that we had by this time passed out of the region of discussions concerning abstract principles and intangible theories. I had hoped that the question of the necessity for some legislation of this character had been sufficiently demonstrated by stern facts. The only subject which remained for determination at this stage was whether the Bill in its present form sufficiently covered the ground which it was intended to traverse—whether it fulfilled thoroughly the objects for which it was introduced? I do not propose to enter here into an examination of that somewhat abstruse question—given the necessity for legislation to regulate the relation of landlords and tenants in this country—whether the State has the power to do so or not; in other words, whether the State, by ensuring the zamíndárs against enhancement or variation of its own demands (and that in effect is the meaning of the Permanent Settlement), had abdicated in perpetuity its legislative functions to protect and safeguard the interests of another class—a much larger and more permanent class. If the contention of the landlords on this head is correct, the result necessarily follows that the Government of this country is an incomplete Government, that it has in fact established an *imperium in imperio* and that, so far as the raiyats are concerned, it has delegated all its powers to the ever-shifting body of zamíndárs.

"The zamíndárí argument reduced thus into plain language sound somewhat absurd, and one can hardly suppose that the zamíndárs, or rather their advocates, mean seriously all that they have urged againt the power of legislation possessed by the State. Assuming, however, that the Permanent Settlement was a bar to the State ever interfering between the raiyats and the zamíndárs, the fact that in 1859 the legislature did interfere with the acquiescence or consent of the landlords of that time has, I would contend, removed the bar. It is unnecessary for me to dwell much longer on this branch of the question, for my hon'ble friend Mr. Evans has completely demolished that preposterous argument. However, one observation I would make. Whatever may have been the position of the zamíndár under the Moghuls, whether he was merely a rent-receiver of the territorial revenue of the State from the raiyats, as described by Mr. Harington, or something more, the legislature, whilst settling the revenue payable to the State in perpetuity, expressly reserved to itself the right, which belonged to it as sovereign, of interposing its authority in making from time to time all such regulations as might be necessary to prevent the raiyats being improperly disturbed in their possession or loaded with unwarrantable exactions. That power, expressly reserved on that occasion, has been exercised repeatedly, and it is trifling to contend that because the State a hundred years ago settled in permanency the revenue payable by the zamíndárs, therefore, it abandoned all its duties and responsibilities towards millions of its subjects.

"The question of necessity is one which is certainly deserving of great consideration. With reference to this point I desire to say a few words. Since the year 1870, the necessity for a thorough revision of the land-law has been forcing itself upon the minds of all thoughtful observers. The tension of feeling which had sprung up about that time between the

zamíndárs and raiyats had occasioned considerable administrative difficulties. The zamíndárs themselves had commenced to demand some change in the existing law, in order to give them facilities for the realization of their legitimate rents, while the raiyats complained of the arbitrary exercise of the powers of enhancement and eviction. These difficulties were accentuated on one side by the confusion of ideas relating to the subject of tenant-right, on the other by the extravagant claims put forward by the new landlords, who were most tenacious of their rights to enhance the rents of their raiyats. It will be remembered that Act X of 1859 had been passed with the object of providing some efficient safeguards against the exercise of arbitrary power on the part of the landlords. From 1799 to 1859, as His Honour the Lieutenant-Governor remarked in his speech on the introduction of the Bill in Council, 'feudalism on the one hand, serfdom on the other, were the principal characteristics of the land system of Bengal.' The legislature no doubt endeavoured to maintain intact 'the constitutional claims of the peasantry,' but 'practically,' His Honour said, 'they were submerged in the usurpations and encroachments of the zamíndárs.' Act X of 1859 undoubtedly effected some improvement in the position of the raiyats, but the rule for the acquisition of prescriptive occupancy-right by a twelve years' occupation of particular plots of land did more harm than good. And the rule of enhancement based on the productiveness of the soil eventually became a fruitful source of difficulty and trouble.

In 1873, the Government for the first time awakened to the gravity of the situation. The famous Pabná riots broke out in that year, and since then there have been periodical collisions between raiyat and landlord in different parts of the province. In 1873, Sir George Campbell spoke thus about a definitive settlement of the land question :—

'If the settlement is to be effective, it must not only get the zamíndárs out of their present difficulties, it must bind them for the future. It must settle all questions of possession, measurement and rates, it must decide who is and who is not liable to enhancement, and it must have power to prescribe a term—a good long term—for which its adjustment is to be binding, and the zamíndárs are not to be allowed to disturb the rates and arrangements made. No doubt this will be a serious undertaking, but it would be an effectual and beneficial settlement if fairly and thoroughly carried out. The Lieutenant-Governor would not advocate interference unless it is carried to this point.'

"In 1875, Sir Richard Temple, who had taken the place of Sir George Campbell, again brought forward the proposal regarding the amendment of the substantive law, and invited the opinion of the British Indian Association on the subject. In a letter dated 10th of March, 1876, the Honorary Secretary of that body pointed out the defective character of Act X of 1859 in essential particulars, and the necessity for a radical amendment. Before this, in June, 1875, the British Indian Association had already represented that the struggle between zamíndárs and raiyats, due to the indefiniteness of their relations and the readiness of the raiyats to combine in withholding rent, could only be ended by a general revision of the rent law. In March, 1876, whilst the Agrarian Disputes Act was pending before the Bengal Council, our lamented colleague, Rai Kristodás Pál, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a deadlock. It was in consequence of these repeated representations, and the urgency of the difficulties which had arisen both in Eastern Bengal and Bihár, that Sir Richard Temple asked for leave to introduce a measure into the local Council; but before he could get a reply he was sent to Southern India to look after the relief measures. When Sir Ashley Eden assumed charge of the Lieutenant-Governorship of Bengal, he found affairs in this position. The zamíndárs, on one side, were calling out for facilities for the recovery and enhancement of rents; the raiyats, on the other hand, were asking for protection against illegitimate enhancement and eviction; whilst the officers of Government charged with executive administration were of opinion that some measure by which the existing tension of feeling could be removed should be taken in hand at once.

"It was in view of these signs and shadows of coming events that Sir Ashley Eden strongly urged upon the Government of India the advisability of settling the rent question definitely while the country was tranquil, while seasons were favourable and the people well off, and reason could make its voice easily heard, instead of allowing things to drift on until another famine or a second outbreak of the Pabná riots compelled the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency.

"This Bill, I mean the *original* Bill, was introduced with the object of definitely placing, so far as was possible, the relation of landlords and tenants on a satisfactory basis. The objects were distinctly defined in the speech of the hon'ble the Law Member—

"(1) To give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

"In order to attain the first object, it was proposed to make the following changes in the existing system :—

"(1) to extend the occupancy-right to all resident raiyats holding lands in a particular village or estate for more than twelve years;

(2) to make occupancy-rights transferable;

(3) to introduce a fixed maximum standard for the enhancement of rents.

"The disastrous and demoralising consequences resulting from the twelve years' rule of prescription are now recognised by all. It did away with the long-established distinction which had existed from the earliest times between the resident and non-resident raiyats, reducing them all to a dead level of uniformity; the raiyats claiming rights of occupancy being required under the existing law to prove that they have held for twelve years not merely in

the village lands, but in everyone of the particular field or plots in respect of which the right was claimed. When it is borne in mind how frequently the twelve years' prescription is interrupted by a mere shifting of the fields, sometimes by eviction within the term, in other cases by the grant of terminable leases for short periods with the option of renewal, it will become apparent how difficult it is in general for the raiyat to acquire a right of occupancy, or to prove it when it is questioned. Considering the testimony which has been borne from all sides of India to the prosperity of raiyats possessing occupancy-tenure, to their ability to withstand and make head against droughts and scarcities, to tide over in general more successfully such disasters as were caused by the cyclones and the great tidal wave in Deltaic Bengal, it is unjust to charge us with being doctrinaires and theorists in coming to the conclusion that a measure simplifying and facilitating the proof of occupancy-rights is essential to the well-being of the agricultural population of Bengal; in fact, in endeavouring to restore the occupancy-raiyats to their old position.

"The same fatality which overtook Act X of 1859 in Committee has befallen this measure. Owing to the same spirit of compromise which wrecked that Act, most of the alterations which have been effected in the present measure at its latest stage have been made, as admitted by the Hon'ble Mr. Evans, in favour of the zamíndárs, and some of the most important provisions for the security of the raiyat and the improvement of his condition have been abandoned, or so modified as to be of little advantage to him. We had expected that the measure now under discussion would give a legal validity and statutory sanction to the custom of transferability of occupancy-holdings; we had hoped that the law relating to the enhancement of rents would be so modified that, supplying to the landlord a more workable method of enhancement, it would protect the raiyats from incessant harassment and perennial destitution; we had hoped that there would be a practical check imposed on rack-renting; that some substantial guarantee would be given against the ejectment of non-occupancy-raiyats, simply with the object of preventing their obtaining that interest in the soil which would induce them to improve their husbandry and their condition in life

"The amended Bill falls far short of the just expectations of those who, after all this agitation, would have liked to see a definitive settlement of the land question in Bengal.

"I shall have to say something with reference to each of these points when I move the amendments which stand in my name. I desire, however, to remark in passing that I cannot help regarding the abandonment of the transferability clauses as a serious misfortune. The custom of transferability had grown up in many districts of Bengal and bihár, and was gradually extending itself throughout the province. It had also been conclusively proved that those raiyats who had a permanent alienable interest in all their holdings were more prosperous than those who had no such interest, that their cultivation was better, and that they were more capable of making head against scarcities and famines. In the face of this evidence, to forego all the advantages gained after so much discussion, to leave the right of transferability to custom in the present tension of feeling between landlords and tenants, is to invite the zamíndár to contest the right every time the opportunity occurs. The result of all this will be, firstly, to place a large proportion of the purchase-money in the pockets of the zamíndárs, and, in the second place, materially to retard the extension and growth of the custom of transferability even where it has taken root. I am glad that my hon'ble friend, Dr. Hunter, is willing to give his valuable support to my proposal for the re-insertion of the transferability clauses, and I think I shall be able, when I bring forward my amendment, to meet his views regarding the amount of fee which ought to be paid by the raiyat. Probably my hon'ble friend will not object to exempt those *guzáshtadárs* whose right is protected by long-established custom from the payment of any fee.

"The objection against a gross-produce limit proceeds mainly on theoretical and *á priori* grounds. It has been said that, if such a limit is adopted, in every case of enhancement by contract, the registering officer will have to enter into a minute and difficult enquiry, and that the same will be the case in Court. I maintain that this argument assumes two points. In the first place, it presupposes an insuperable difficulty in making a fair rough average estimate of the yield of land and its value. Now, I venture to say there is no villager with any knowledge of cultivation who has not a rough conception of the yield of produce and the value of the crop. In the second place, the argument against the gross-produce limit assumes that in the registered agreements to pay enhanced rents the parties do not or will not enter the quantities of land, its nature, capacity, &c. If the statement of these facts will not enable the registering officers to form some rough estimate of the produce limit, I am afraid the Local Government will have to improve its staff of registering officers.

"I may observe here that in the Panjáb the land-revenue assessment is limited to the equivalent of one-sixth of the gross-produce, and the system has been found to be extremely practicable. If it is practicable in the Panjáb, why should it not be workable in Bengal?

"As regards the non-occupancy-raiyat, our contention that the protection which has been given to him by this Bill is utterly inadequate, is borne out by the frank avowal of the zamíndárs' representative that henceforth no non-occupancy-raiyat will be allowed to acquire the status of an occupancy-raiyat; such an avowal would hardly have been made if the guarantee given to the non-occupancy-raiyat against eviction had been adequate.

"If the extension of occupancy-rights among the raiyats be conducive to the general welfare of the community, then there can be little doubt that any loophole for perpetuating tenancies-at-will, for continuing the vicious system of shifting and eviction would be disastrous to the public weal. As population increases, as the demand for land becomes greater, the effort to exclude the possibility of acquiring occupancy-rights will be redoubled. At the same time

I desire it to be distinctly understood, that I do not advocate the promiscuous extension of the occupancy-right to non-occupancy-raiyats. What I want to see is that the latter should be reasonably protected from perpetual harassment. This I submit has not been done efficiently by the Bill. At the same time I admit that the present measure is an improvement on the existing law. The acquisition of a right of occupancy by residence; the prohibition of contracts precluding the accrual of the right of occupancy; the restriction on enhancement out of Court; the validation of the raiyat's right to make improvements, constitute the most commendable features of the present Bill, and I accept it as the first instalment of the inevitable legislation which *must* follow sooner or later to settle the relations of the cultivating classes with their landlords more satisfactorily. My Lord, the hon'ble member in charge of the Bill has referred in kind terms to the services of the non-official members of the Committee. As far as I am concerned, it was a labour of love, for I cannot help taking a keen interest in this measure. The bulk of the peasantry in Eastern Bengal, numbering several millions of souls, belong to my faith, and naturally have a claim upon the Muhammadan member for the time being in Your Excellency's Council. In Eastern Bengal, the agrarian troubles are aggravated by religious differences and the fact that many of the zamíndárs are new comers. The new landlords, generally speaking, have little or no sympathy with their peasantry, most of whom are Mussulmans. If the law gives them power, say, of enhancement or ejectment, it is worked without compunction and without mercy. I say this advisedly. The causes and character of the Pabná outbreak must be familiar to this Council, though apparently they have been forgotten outside this Council Chamber. They illustrate most strikingly the general nature of rent-disputes in Bengal. I will take the liberty to quote here a passage with reference to the outbreak from the Government of India's despatch to the Secretary of State, dated 21st March, 1882 :—

'The affair originated in the Isafshahi pargana, formerly owned by the Rájás of Nattore. In the decay of that ancient family a part of its possessions was purchased by new-comers, whose relations with their raiyats and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses which were afterwards more or less consolidated with the rent. The raiyats never gave any written or formal consent to the conversion of these voluntary abwábs or cesses into dues which could be realised according to law, In time the rent-rates of Isafshahi came greatly to exceed those of neighbouring tracts.

'Two causes of the dispute were thus a high rate of collection compared with other parganás and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamíndárs, and of the agents of others. There had been affrays in which men were killed by spear-wounds. Swordsmen had been sent to make collections, and cases of attack by clubmen and of kidnapping are mentioned in the report.'

"It has been stated in this Council that the reasons for interfering in Bihár with the status of occupancy-raiyats are non-existent; that the practice of shifting is not resorted to there for the purpose of avoiding the accrual of the right. This statement may be true in the case of considerate zamíndárs like the Hon'ble the Mahárájá of Darbhungá, who, whilst tenacious of their ancient rights, respect and value the constitutional rights of the peasantry. But by way of answer to his criticism on that portion of the Bill which aims at giving a certain degree of security to the occupancy-raiyat and towards facilitating the proof of his right, I would recall to his mind what the zamíndárs of Shahábád, at a meeting held on the 31st October, 1880, at Arrah, said on the subject :—

'At present landowners prevent the growth of occupancy-rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for 12 years. In practice the last expedient is found sufficient, as the Courts find claims to occupancy-right not proved unless the raiyat can show that he held the same land for 12 years, by proving that he paid the same rent. Under the proposed law zamíndárs would not suffer raiyats to remain for three years.'

"The Hon'ble Mr. Evans has urged that, if the circumstances of Bihár were so exceptional as they were represented to be by the officers of Government who had reported on the subject, there ought to have been two Bills, one for Bihár, another for Bengal. I admit that, if we had adopted this course, we would have been better able to deal with details; but on that principle there ought not to be two Bills, but four Bills—one for Eastern Bengal, another for Central Bengal, a third for Northern Bengal, and a fourth for Bihár; for the conditions of rural economy in each of these tracts are dissimilar to each other. I doubt, however, whether the public or the people would have thanked the legislature for such a course. Besides, the evils which the legislature desires to remedy, the circumstances which it desires to direct and control, are not after all very different in either of these parts. The landlord everywhere desires to recover his rent easily; the raiyat everywhere wants to be allowed to live in peace; and the legislature has before this dealt with the province as a whole. The limit of two annas on enhancement by private contract has been strongly objected to. It is said that such a restriction is not only opposed to all the principles of freedom of contract, but that it will prove practically mischievous, as it will always drive the parties into Court for obtaining a higher enhancement. My Lord, how far the rules of political economy are applicable to a country where the mass of the people live from hand to mouth is a question which was answered effectually, though at the cost of a million of lives, during the Orissa famine. The Bengal Government on the occasion attempted to deal with the calamity which had overtaken the country in strict accordance with the rules of political economy, but the results completely falsified the expectations entertained at the time from the application of the economic nostrum. 'When political economy speaks of freedom of contract,' were the memorable words Sir Evelyn Baring used in this very hall, 'it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth.' Can any one, who is acquainted with the condition of the millions of raiyats, whose holdings do not average more than two or three

acres, and who pay a rent of less than five rupees a year, can any one who knows the circumstances under which this vast mass of pauperised cottiers, living always on the verge of starvation, till the soil, say that these men can exercise a free and intelligent choice in their contracts?

"My Lord, I am afraid I am encroaching too much on the indulgence of the Council. But I cannot help being somewhat long, in spite of the charge of prolixity that may be brought against me. Political economy is thrust down one's throat at every turn of the question; indeed, so often, that I am tempted to quote a passage from the master of political economists, which I hope will be taken to heart by the warmest upholders of zamíndári rights.

'Rent,' says Mill, 'paid by a capitalist who farms for profit and not for bread may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilisation and improvement, which labourers have nowhere yet reached and cannot easily reach under such a tenure. Peasant rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed, where not mutually advantageous custom has established itself, reason and experience recommend that they should be fixed by authority.

"My own view is that it is not only necessary to impose a limit upon private contracts, but that, in order to be efficacious, a similar limit should be introduced upon enhancements in Court; otherwise I believe the wholesome provision will become practically valueless.

"The remarks of the Hon'ble Bábú Peári Mohan Mukerji, that there is practically no non-judicial power of distraint given by the Bill for the realisation of rents, are perfectly true. Undoubtedly in the despatch to which both the hon'ble member and I myself have referred it was proposed 'to provide for the more speedy realisation of arrears of rents, *when the rates are undisputed*, by a modified method of distraint.' It must have escaped the notice of my hon'ble friend the importance to be attached to the expression 'when the rates are undisputed'. Is there any case in which the rates are not disputed? Probably, in some districts, or rather estates, bordering on Nepaul and other frontier tracts, which give the raiyats a facility to disappear after raising their crops, a modified power of distraint might prove useful; but when the Committee came to consider the abuses to which this power is open and the oppressions practised under its guise, it was thought advisable not to leave to the zamíndár the power of distraint at his own free will and according to his own method. The provisions of Chapter XII are, I think, in accord with the Government of India's proposal in the despatch referred to.

"It has been contended that we have no cross-examined evidence furnishing, as it were, the ground work over which the legislative structure has been built. A great deal of money has already been spent in various quarters in the course of these discussions, and probably, if the Select Committee had decided to hear cross-examined evidence, a little more would have been put into the pockets of lawyers. But whether evidence so collected would have been one iota more valuable than the testimony of competent officers and thoughtful observers is a question which I cannot answer. I have pointed out the features in the Bill which stand out as marked improvements over the existing law. I have also pointed out the features where it falls short—miserably short—of the just requirements of the present situation. I trust that, before the final vote is taken, the objectionable features in the Bill will be removed, the most important of them—the most dangerous—being the ground of enhancement based on increase in the prices of food-crops.

"This ground of enhancement, besides being open to various economical objections, furnishes the landlords with a most formidable and trenchant weapon for enhancement of rents, the use of which in many parts of Bengal and throughout Bihár must prove ruinous at no distant date of those raiyats whose rents are already high enough. In defence of this proposal it has been put forward that enhancement on the ground of increase in prices does not take more of the crop from the raiyat; in other words, that it is the value of the crop expressed in larger terms owing to the diminished value of silver. This is undoubtedly a very specious argument, but in spite of its speciousness I maintain that it is extremely unfair to the raiyats. On examining the argument even on the basis of political economy, it is seen that it leaves out of consideration an increase in the necessities of a raiyat, and a larger expenditure on account of what he has to buy. Furthermore, it is clear that the allowance for cost of production may often prove totally insufficient. For these and other reasons, which I shall mention more particularly when I move my specific amendments, it seems to me that the effects of this ground of enhancement have hardly yet been realised to their fullest extent.

"As the question stands at present, I accept the Bill as a step in the right direction, and in looking at it in that light, and approving entirely of the principles which it embodies, I vote for the motion that the consideration of the Bill should be proceeded with without delay.

"With reference to the motion for the re-publication of the Bill, I desire to mention that, had I believed any possible object would be gained by such a course, that the zamíndárs or raiyats would become by delay more willing to make concessions to each other, I might have been inclined to vote for the postponement of the consideration of the Bill until next session. As it is, I believe a postponement will keep the country in a state of feverish excitement, intensify still further the bitter feelings existing between the two classes, and prove of no avail to anybody."

The Hon'ble MR. GIBBON said:—"My Lord, with reference to the amendment proposed by the Hon'ble Peári Mohan Mukerji, that the Bill be re-published and that the consideration of the measure be deferred for at least three months, I must, I am sorry to say, oppose the amendment. The state of the country is such, the agitation for and against the measure is becoming so widespread, I am convinced that it leaves only two courses open to Your Excel-

lency's Government—either to proceed with the measure, or to abandon it for ever; any third course will be fraught with danger to the public peace, as well as ruinous to the interests of both landlords and tenants. For six years the provisions of the Bill have been in some shape or another subjected to public criticism; every alternative proposal, every impossible crotchet has been discussed and threshed out; aud, although the Bill may contain a few sections that were not contained in the draft Bill submitted to the Committee, it contains no provisions that have not already been subjected to public criticism.

"I am sure no arguments could be adduced for or against any of its provisions that are not contained in the mass of correspondence already submitted.

"Believing such to be the case, I cannot realize what good purpose is to be served by the delay asked for. On the contrary, in the interests of the landlords more so than in the interests of the tenants, delay is to be deplored. We have nothing to gain by the delay, much to lose. Judging from what I see and hear around me and in my work, I believe further delay, more indecision, means ruin.

"The fears of the zamíndárs have been excited fully as much by the many crude proposals from time to time submitted as from anything contained in the Bill. Their fears of the measure, their public utterances, are having their effect on the minds of their tenants, and we must not be surprised if their tenants measure their own gains by the estimate placed by the zamíndárs on their own losses.

"The raiyats believe that the Bill will give them fixity of tenure without any reference to the means by which they may acquire possession of the land; a right to sub-divide and transfer their holdings piecemeal; freedom from enhancement; freedom from payment of rents; a general right to appropriate other peoples' property. We now require something definite, something final, to recall us to our senses. If the proposal of the hon'ble member is carried, we may expect to see the tenants acting up to the tenor of their convictions, defying all law, following the bent of their inclination.

"The Courts are at present blocked with litigants, but unless something is decided upon quickly the work the Government officials are now required to do will be child's play in comparison with the work that would be cast upon them.

"If the Bill is not proceeded with or abandoned, Your Excellency's Government must be prepared to substitute one of a very summary nature. Your Excellency's Government must be prepared to manage half the zamíndáris of the country, for I am quite sure that if the present agitation is allowed to proceed unchecked we will not be able to manage them for ourselves.

"The only means of checking this agitation is to let us know at once the best and worst we have to expect under the Bill.

"If I understood the Hon'ble Mahárájá Bahádur correctly, he would even at this stage of our proceedings delay the progress of the measure until a Commission of Enquiry has been held. A Commission issued now with the declared intention of basing legislation on its report would have the most demoralizing effect on the country; it would divide the country into two hostile camps, bespattering each other with mud; few among us would see the end of it; all would regret the result.

"My Lord, with reference to the subject-matter of the Bill, so much has been said on almost every one of its provisions that little is left for me to say. For me to attempt to improve on the many admirable arguments adduced in support of the views I hold I conceive to be an impossible task—also a needless one to attempt to refute, in one set speech, the many arguments with which I differ—a waste of time—with so many amendments on the notice-paper,—an amendment, sometimes two or three, on every important section in the Bill. I may hope that ample opportunity will be afforded us of discussing our respective differences to some better purpose hereafter.

"With reference to the much-disputed point as to whether the Bill in any manner infringes the terms of the Permanent Settlement, or whether the Government, in now legislating as it is about to do, only acts up to the powers it reserved to itself in the Regulations, I have no wish to enter at any length. I would only say that, in my opinion, with the exception of section 18, which does to all intents and purposes transfer the proprietary right in the soil from one class of persons to another, the Select Committee, and through it the Government, have carefully kept within its powers. The Bill, with the exception of this one section, does nothing to interfere with the proprietary right in the land, but it does overmuch to regulate the landlord's dealings with his tenants.

"I will now try to confine the few remarks I wish to make to those portions of the Bill which are to regulate our business transactions, which instruct us in the manner we are to conduct ourselves towards our tenants, and the difficulties we shall have to contend against in following its instructions—points which it appears to me have been slightly passed over or not gauged at their true significance. The Bill as it stands will do all the hon'ble member in charge of it has declared it will do to secure to the tenant the uninterrupted enjoyment of his legitimate rights; it has made the position of the raiyat, both occupancy and non-occupancy, impregnable; and in one most important respect it will effect more for them than the hon'ble member has taken credit for; by a small and as yet little noticed change made in the procedure free the country from wholesale enhancement under pressure.

"The alteration I refer to is the substitution of immediate suit for the present practice of issuing 'notices of enhancement through the Courts months previous to the introduction of the suit.' The practice of issuing notice of enhancement through the Courts has done more to facilitate wholesale enhancement of rents of estates than any other provisions of the present law. Notice of enhancement has necessitated present legislation and made this Bill possible. This

change about to be made in the procedure will, I am sure, be beneficial; its effects will, I hope, be far-reaching; it will, I hope, make the restrictions placed on voluntary enhancement under section 29 unnecessary.

"That legislation is to a certain extent, as provided by the Bill, necessary, there can, I think, be no doubt; but whether in the early stages of the controversy the alteration of a few sections in the present law would not have proved sufficient may, I think, be allowed to be an open question. We will admit that you have gone too far to recede: you must proceed, and we, both landlords and tenants, are wise if we accept the inevitable with a good grace. But with reference to this Bill many hon'ble members, many persons who have taken part in this controversy, when they fail to meet the argument that it is not suited for Bengal, fall back upon the argument that it is required in Bíhár. Nothing is too bad to say of Bíhár; no restriction is too severe to be placed on our actions. If the measure is required for Bíhár and is not required for Bengal, we should withdraw that Province from the sphere of its operations. If the Council are of opinion that the Bill is required in Bíhár and not in Bengal, we should drop it for Bengal and proceed with it only with reference to Bíhár. For my part I am happy in believing that we in Bíhár are no better, no worse, than our brethren in Bengal; that our tenants are not the down-trodden, poverty-stricken men they are often depicted; and I would fain hope that, when some among us set aside the spectacles through which we are looking, and judge with our own eyes, our tenants will be found in every way as well off and as independent a class as any in Bengal. For my part I am convinced that, if any portion of this Bill is unsuited for Bengal, it is equally unsuited for my province. That the rents of whole estates have been unduly enhanced I admit, but that my province is rack-rented as a province I deny. I deny also that there is any necessity for the severe restrictions to be placed on voluntary adjustment of rents under section 29, and in placing such restrictions on it we are acting contrary to the declared principles of the Bill.

"Although I am strongly opposed to indiscriminate enhancement of rents, I am equally opposed to severe restrictions being placed on the landlord's right to enhance where enhancement is fairly due. I am still more opposed to unnecessary obstacles being placed in the way of a mutual adjustment of rents, or, for that matter, in the way of voluntary enhancement out of Court.

"All such unnecessary restrictions only hamper the good men among us; they will be evaded by the worldly-wise.

"My Lord, three more gaps must be filled up before the restriction in this section will be effectual, and to stop these gaps some of the best portions of the Bill must be revised.

"With reference to section 29, the Hon'ble Mr. Evans has shown the Council more clearly than I am able to do the difference between adjustment of rents and enhancement of rents. He has quoted the Malynuggur case as a case in point. If I understood him correctly, he submitted it in support of the planters' contention 'that an adjustment of rents should be allowed when one party to the agreement declines to continue to fulfil the conditions under which the tenancy was previously held.'

"If I understand the case correctly, it was hardly a case to the point; it was a case in which it suited one party to the agreement to set aside the conditions under which the tenancy was held, and the party who found it convenient to set aside the conditions of the tenancy claimed an enhancement of rents on the ground that he had cancelled a condition of the tenancy which he no longer found it convenient his tenants should fulfil.

"As to the rights of the different parties under the present law I have no concern. I would only point out that this case in no way represents our claim: our claim is represented better under section 51, which says:

'If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.'

"The practical effect of this will be that the Courts will find the conditions of a tenancy are equally binding on both parties, and that the person who sets aside the conditions without consent shall made good the other's loss by a re-adjustment. All we claim is that the party who finds it convenient to set aside the conditions of a tenancy shall not be placed in a position to retain all the advantages minus any onerous or compensating conditions.

"Section 29 will have the mischievous effect attributed to it by the Hon'ble Mr. Evans; its effects could only be redeemed by the Government declaring that all suits for enhancement may be brought free of cost. This I deem to be impossible. Many urgent representations have been made in Committee and out of it to cheapen costs of suits.

"It has been recommended to reduce court-fees and to expedite the hearing of suits—both very necessary. At present we are put to great expense and needless loss of time by the delays in the hearing of our suits; our witnesses are obliged to travel long distances only to be sent back. The lessening of court-fees is not sufficient; it is necessary to reduce process-fees also.

"I do not know how many of the hon'ble members here present are aware that if I procure a decree against a tenant for arrears of rent, if his holding consists of ten pieces of land, he must pay an attachment fee of Rs. 2 for each piece and also a further fee of Rs. 2 on each piece as a fee on sale. Such fees are exorbitant, and they fall on the judgment-debtor. Unless such are remedied, the provision of the Bill which substitutes sale of holding for ejectment after decree will be cruel.

"For all sums under Rs. 100 the judgment-debtor has to refund 65 per cent. of the

principal as costs of the plaintiff; he has to stand all his own costs plus sale-fees if the holding is sold.

"The changes the Bill will necessitate in our modes of transacting business are very great. Receipts must be kept in counterfoil, with severe penalties attached for neglect to deliver; agreements must be registered; all accounts must be kept in bound books; a suit for pattá and kabúliyat has been set aside and an application for a declaration of conditions under section 158 substituted; the landlord must no longer neglect to deliver a receipt; and other changes too numerous to mention have been made—all improvements in a way; but the penalties for omission and commission are so severe, so many opportunities will be afforded for worrying the landlords, that the Bill if hastily or harshly administered may be turned into an engine of oppression. It must be remembered that to carry out the instructions of the Bill in their entirety the habits of a lifetime must be discarded. In attempting to follow your rules we shall require all your sympathy—much forbearance. Throughout the discussion much stress has been laid upon the necessity of compelling the landlords to keep their accounts in bound books, much discredit has been cast upon their mode of keeping accounts, but no one has thought it necessary to enquire if it has even been made possible to do otherwise than as we now do. When we keep our accounts in bound books they are called for in evidence not only in our own cases but in the interests of others; our servants have to take them to Court half-a-dozen times before their evidence is taken; our books are detained in or out of Court for days together; some of my books are detained for months; we are at the mercy of our opponents and of the Courts.

"I will leave the Hon'ble Council to judge of what use such books are to us when returned.

"The remedy we must leave to others to provide. All I can say is that, as the accuracy of the landlords' accounts will depend upon the punctuality with which they are written, it becomes a matter of the first importance that the present state of affairs be not allowed to continue; if it does, our second state will be worst than our first; the landlord will be compelled to keep two sets of books, one for himself and one for the Courts.

"Under the Bill a registered document is in many instances absolutely necessary; in all instances it will carry greater value than an unregistered one. The Hon'ble Mr. Evans has quoted the authority of the Board of Revenue to prove how difficult it is to induce tenants to register. I myself am a strong advocate of registration; registration should be encouraged in every way possible, but it remains for the Government to make registration possible. The Select Committee has called the attention of the Government to the necessity of expediting and cheapening registration: at present registration is in some cases almost prohibitory, in some cases quite so; at present every tenant must waste at least 48 hours of his time besides having to travel long distances; documents are impounded or returned for the most trivial errors; and if such is the case when registration is the exception and not the rule, what will it be when registration is made compulsory? Under the Bill there is no enhancement of the rents of a bhaoli tenure, and rightly so; the initial rent will be the rent for all time to come; but under the law a bhaoli agreement cannot be registered; should a dispute arise as to the rate of the tenant's rents, he must prove his right to hold under section 51 or pay at the rate others are paying. Another change is about to be made in the procedure, and I hope it will prove itself to be a beneficial one, but again all will depend upon the cost of the application.

"An application under section 158 to declare the terms and nature of a tenancy is to be substituted for the time-honoured but cumbersome practice of a suit for the interchange of documents. There is nothing in the Bill to prohibit their interchange; on the contrary, they are made necessary at every step, but they cannot be sued for. The change is a good one and practical, but it will take us some time to understand. If the cost is not made prohibitory, it should benefit both parties: as it is to be a simpler mode of proceeding I hope it will be a cheaper one. Under the Record-of-rights and Settlement chapter much good will, I hope, be effected; vast and exceptional powers are given to the Government under it; but those powers, as they are intended to meet exceptional cases, we may, I think, trust the Government to exercise them only in cases of grave necessity. I believe this chapter, as it stood in the draft Bill, created more uneasiness, greater consternation, among the landlords than any other portion of the Bill. I hope when they fully realize the great changes that have been made in this chapter by the Select Committee they will be re-assured.

"Much as the Bill will do for the position of the raiyat in respect to the position he will stand in to his landlord, it does nothing for him with respect to his credit with his banker. It omits transferability from among the incidents attached to an occupancy-holding; on this point it leaves the law as it stands.

"I regret that the Government does not see its way to legalizing and controlling transfers of holdings. I do not now intend to re-open the question. I believe it would be a hopeless task to attempt to carry such an amendment to the Bill against the solid vote of the Government. I believe the measure will soon force itself on the attention of the Government, when they will have to review their present decision. By forcing on a discussion now I should weaken my case. I am strongly of opinion that legalized transferability of the whole holding is the only valid restriction that can be effectually put on the sub-division of holdings which is now going on all over the country, which the landlords are in some instances encouraging, in others are powerless to prevent.

"There is only one other subject that I would wish to refer to. I will then cease from monopolizing the time of this Hon'ble Council. I refer to the matter of contracts. A great outcry has been raised against the Government for prohibiting a tenant from contracting

himself out of certain rights attached to a tenancy. Although it is to my interest as a trader to support free contract, in this matter I have voted with the majority of the Select Committee.

"Under the Contract Law a contract to be valid must be made with the free consent of parties, for a lawful consideration and for a lawful object.

"As well as I am able to remember, their representatives in or out of Council have never claimed a right to make a contract with their tenants for lawful consideration; all they have ever claimed is a right to induce their tenants to sign away acquired rights under the shadow of a renewal of leases, or to debar them from acquiring prescriptive rights in the future. With reference to the other important and equally weighty matters contained in the Bill, such as prevailing rates, under-raiyats, non-occupancy-raiyats, settled-raiyats, presumptions, proprietors' zirát land, merger, &c., and with reference to the gross-produce limit which has been omitted from among its provisions, I will reserve what I have to say until the specific amendments come under the discussion of Your Excellency's Council.

"Before I cease, I would refer to a remark which fell from the Hon'ble Mr. Goodrich, that no provision has been made for the acquisition of land for charitable purposes. I think, if the Bill is seen to, it will be found that section 54 provides for this; but I am sorry the majority of the Committee did not see their way to adopting my suggestion to include the acquisition of land for irrigation purposes in the section. If it is possible to acquire land for the one purpose, it is possible to acquire it for the other."

His Honour the Lieutenant-Governor said:—"My Lord, I do not think I should have attempted to say anything at the present stage of the discussion had it not been that I have been referred to by very many speakers who have preceded me. We have had very appropriately an exhaustive statement from the hon'ble member in charge of the Bill, who has given us a full history of the proceedings since this Bill was last before the Council. We have had speeches also from most of the members of the Council—certainly from all on the Select Committee—dealing at length with the details and principles of the measure; and in these speeches we have had laid bare, at least I trust so, the thoughts and intents of the heart of each speaker as to the main issues with which we shall have to deal in the further consideration of the Bill. I think I shall best consult the wishes of my hon'ble colleagues in Council, and certainly my own convenience, if I limit what remarks I have to make upon the present occasion to the practical issues which have been raised by the speech of the Hon'ble Mahárájá of Durbhunga, and by the speech of my hon'ble friend to the left who ably represents the British Indian Association and the zamíndárs of Bengal. All or most of the other points to which allusion has been made in the course of this debate will arise on a consideration of the various amendments which are upon the notice paper; and for myself I would prefer to deal with these in detail as they arise rather than by the running commentary of a general statement.

"Now the definite questions which are immediately before the Council, are contained in the addresses of the Hon'ble the Mahárájá of Durbhunga and the Hon'ble Bábú Peári Mohan Mukerji. The Mahárájá says the Bill should be abandoned because it is a bad one; and the latter contends that the Bill has been imperfectly and insufficiently considered, and that therefore it should be postponed for re-publication. Anticipating the formal notice which stands in his name on the paper, he wishes that the postponement should be for three months, but we are all aware that that practically means a postponement for nine months or one year.

"The Mahárájá condemns the Bill, because, to use his own words, it was 'discredited and disowned by the Select Committee' on account of their want of unanimity as shown by the many dissents; and secondly, that the zamíndárs and raiyats are not agreed in regard to it; and lastly, that it is, of course, a gross breach of the solemn promises made by the Government in the Permanent Settlement. Now I do not think that the absence of union in the views of the Select Committee need distress the Mahárájá so much as it appears to do. We are dealing here with a very large measure; indeed, we may say that no larger measure has been under the consideration of the Government since the days of the Permanent Settlement. It is a measure also involving very deep and abstruse questions—questions which go back to a period even before the time of the Permanent Settlement; and it is complicated with innumerable details in all relations between the landlord and tenant. It seems to me, having regard to the character of the legislation contemplated, impossible to have expected that union and unanimity in the opinions of the Committee which the Mahárájá so strongly desires. For, if we look at the composition of that Committee, we see at once what a variety of different local experience and interests they represent. You have the representatives of landlords of both sections of this great province of Bengal, of the landlords who have and own property both in Bengal Proper and in Bíhár, the circumstances and conditions of which vary in many important particulars. Then you have the hon'ble member from the North-Western Provinces, who brings to the consideration of the problem a very practical knowledge of the land system which exists in those provinces. We have also traditions of the Board of Revenue influentially represented by the Hon'ble Mr. Reynolds; the statistical research and information which have affected so many of our decisions in the person of Dr. Hunter; and the special usages and customs in which the Muhammadan community are interested; and lastly, not least, the influential opinion and support which my hon'ble friend Mr. Gibbon has brought to bear upon the whole subject, speaking in the interests of European planters, and as himself the manager of extensive landed properties.

"Having regard, then, to the constitution of the Committee, and to the well-known and admitted fact that there are wide differences in the circumstances of different parts of the province, the demands for a complete unanimity in the Report seem to me unreasonable.

"Then, as to the dissents themselves, I think an examination of them will tend to show that there is no such force in the expression of their differences as is sought to be attributed to them. I will take my own first, though I do not put it forward from any idea of its special importance, nor from any sense of its claim to priority having regard to my position as the head of this Administration. But it will perhaps best illustrate what I mean. The nature of my objection is that there are certain matters, such as the abolition of the 'prevailing rate' as a ground of enhancement, the adoption of a gross-produce limit of rent, and some plan for the better security of the non-occupancy-raiyat, which, if included in the Bill, would have greatly improved it. The majority of the Select Committee thought otherwise; but this is no reason why I should reject the Bill as it is submitted to the Council. I think there is a great deal in the Bill as it comes before us which is in advance of the legislation of 1859. There have been considerable improvements in many respects which I gladly accept. If I cannot have my own way in everything, still I am not going to reject what the Bill contains because I cannot have my own way altogether. I take it that this is very much the view of Mr. Reynolds, who regards the Bill as an instalment of a more complete measure. So, if regard is had to the dissents of the Hon'ble Members Mr. Hunter and Mr. Amír Alí and Mr. Gibbon though they severally raise points of considerable importance, I think you will find that they are more or less upon matters of detail, which will be fully dealt with under the amendments to be considered in Council; but whether they were rejected or accepted, they are not of that vital character which would justify us now in endorsing the Mahárájá's recommendation to abandon the Bill. Of course, I am aware from the dissents of the two hon'ble Native members that they go to a greater length than the others, and will concede to no compromise. They seem now to say 'we do not want a Bill of this kind at all; we live under the best possible of all Governments, and we have the best possible of all rent laws, and we do not want any modification of them. We very much prefer the existing state of things to any change which goes in the direction of this Bill.' This seems to me the attitude of the zamíndárs represented by the two hon'ble members at the present moment; but after ten years of labour devoted to the subject, and the general agreement to which the majority of the Select Committee have come in favour of the kind of legislation which the Bill contains, any idea of abandonment seems out of the question. I think it will be clear to any who will take the pains to analyse the several dissents, that, with the exception of the zamíndárí members who stand out, notwithstanding the numerous concessions which have been made to their views, for an absolute concession to all their claims, that, admitting a variety of opinion upon particular points (and they chiefly refer to points expunged from the Bill in deference to the views of the majority of the Committee, and the removal of which should rather conciliate the extreme section on the side of the zamíndárs), there is a general concurrence in favour of the Bill; that it is considered to be a great improvement upon the Bill which was presented to the Council last year; and that they are quite willing to accept it, though it does not contain all that they wanted.

"I would now allude to the argument of the Mahárájá of Durbhunga that the zamíndárs and raiyats do not agree upon the matter.. He says that the Bill neither satisfies the zamíndár nor the raiyat; and he implies rather than declares that an absolute Government and a packed Council were forcing an obnoxious piece of legislation upon all the landed classes in Bengal. Evidently what the Mahárájá wishes us to infer is that the zamíndár and the raiyat are at one in the matter and want one and the same Bill. Nothing, however, can be more certain than the fact that the zamíndárs look upon the Bill from one extreme, and the raiyats from the opposite extreme; and there can be no doubt that, if the Government had to wait till the raiyat and the zamíndár were agreed in a common view upon the character of the legislation upon such a wide subject, we should have to wait for that prophetic period when the lion and the lamb shall lie down together, and the millennium shall have dawned in which it may be hoped that there will be no need for legislators nor land bills. Will not the Mahárájá accept the fact that where the zamíndárs assert an extreme position on one side and the raiyats on the other to such an extent that I have, within the last few hours, received telegrams from a large body of them urging me to sign no Bill which will not grant their full demands, the only right way is to accept as a settlement that which has been adopted upon the recommendations of the majority of the Select Committee? For my own part I am prepared to surrender my predilections in deference to the results of the Committee's deliberations and decisions, in respectful submission to the views of the Government of India, who, it seems to me, must by necessity be the final arbiter of the questions which arise in a matter involving such large issues, and especially in consideration of the position of the eminent statesman, His Excellency the present Viceroy, upon whom has devolved, within a few weeks of his assumption of the administration of this great Empire, the very difficult task of disposing of a question of such magnitude.

"I must now refer to the contention of the hon'ble member who has urged that the Bill has been insufficiently considered, and who in support of that contention has brought forward arguments which I think we have often heard before; and I have little doubt that, if we yielded to his wish for a postponement, we should have just as great difficulties a year hence in reconciling the interests and claims of differing sections as we have had in the past and as we have at the present moment. The truth is that the hon'ble member wants to impose upon us the labours of Sisyphus. We have no sooner rolled the heavy block to the top of the hill than we are asked to roll it down again; only in our case, unlike that of the unfortunate king upon whom this penalty was inflicted, each year adds to the weight of the burden and enhances the difficulty of the task. The request of the hon'ble member cannot be justified; certainly not on the ground of insufficient consideration. Upon this point I don't know that I can add anything to the force of the statements made by the hon'ble member in charge of the Bill, who

has shown that this Bill has undergone longer and more thorough consideration than any measure of the kind which has ever been placed before the Council. If any one doubts this, I would refer him to the first thirty-five paragraphs of a despatch which the Government of India sent home on the 21st March, 1882, to the Secretary of State. Although that paper is now only three years old, it is an almost forgotten part of the extensive literature of the Bill; but if any one wishes to learn the facts he will find in the passages to which I have referred a full history of the origin and progress of the measure. The fact is that very soon after the law of 1859 was passed it devolved on the administration of Sir William Muir, who was then Lieutenant-Governor of the North-Western Provinces, to recommend an amendment of it. It has since then been before four successive Lieutenant-Governors of these Provinces, and that represents a considerable period of time, perhaps not less than 15 years. Sir George Campbell especially took up the matter with the view of checking the illegal exactions going on in Orissa and the very serious complaints of oppression in Bíhár. Sir Richard Temple had to deal with grave agrarian riots in Central and Eastern Bengal; so serious were they that an Act of the legislature was passed to control and suppress them, and to prevent their recurrence in future. From that time excitement on the subject became so intensified that Sir Ashley Eden had to appoint two Commissions to consider the whole subject of the revision of the law of landlord and tenant. The Bill submitted by the United Rent Commission of both Bengal and Bihár was subjected to further revision by the Hon'ble Mr. Reynolds in conference with different local authorities, and the Bengal Government under Sir Ashley Eden eventually submitted their proposals to the Government of India. I can speak with personal knowledge when I say that these proposals underwent a detailed and thorough criticism at the hands of His Excellency the late Viceroy in Council, whose final conclusions were forwarded to the Secretary of State in a historical despatch of March, 1882. Those who contend that this Bill has not had the same time and care bestowed upon it as the Penal Code and the Permanent Settlement Regulations are quite mistaken. It may be the case that the Penal Code was under consideration for many years before it was passed, but it should be remembered that after its first introduction it was left in abeyance for a long period, and moreover the codification of the criminal law was a new subject in this country; while, as regards the Permanent Settlement, the period during which it was under enquiry was, I believe, not nearly so long as the time which has been given to this Bill. It is clear from the records of the day that Lord Cornwallis intended at first to make a decennial settlement as an experimental measure on which a permanent settlement might be based; but so impatient was he to secure the enactment of the measure before his period of office expired, that he passed it before even the assent of the Court of Directors had been obtained to his proposals; so that what was intended in the first instance to be only a decennial settlement came into operation as a permanent settlement. I am, however, attacked by the hon'ble member (Bábú Peári Mohan Mukerji) as to what took place in my own Council with regard to a Bill for the appointment of kánúngos and patwáris, in the course of the discussion upon which I expressed the opinion that great darkness prevailed with regard to all the relations of landlords and tenants; and he asks with reference to this, how can I press forward a Bill of this character, while I plead the existence of such gross general ignorance upon all material facts bearing upon the subject? I need not enter here into a discussion of the merits of that Bill. It is acknowledged to be a measure subsidiary to this Bill. If the chapter in this Bill which relates to the survey and record-of-rights falls through, the Patwárí Bill in the Bengal Council will not be proceeded with. But it must be obvious to every one that if a cadastral survey and preparation of a record-of-rights is to form a material part of the present legislation,—and I would sooner abandon many parts of the Bill than that,—there must be some recognised agency to record the changes which take place from time to time, or else the results of that survey and record will be thrown away in a few months. Now, when I complain of the darkness and ignorance which prevail as to the relations between landlords and tenants, I allude to those kinds of facts of which no one has given us a more direct and practical illustration than the hon'ble member himself. The members of the Select Committee will remember that when we were dealing with some questions as to providing a form of receipts for rent in connection with this Bill—a form which was to show the name of the tenant, the quantity of land he held, and possibly the boundaries of it, the rent he paid, and simple details of that nature—the hon'ble member opposed the proposal on the ground that not one zamíndár in a hundred would be able to give such information. I say that if the zamíndárs do not know the names of their tenants, and the land they hold, and what rent they pay, we are in grosser darkness than I could have conceived possible. Now a survey and record-of-rights would give authoritative information on all such points as these. But the possession or non-possession of that knowledge certainly does not affect the merits of a measure like this, whose primary object is to declare and establish the rights of tenants in their relations to the zamíndár, and to try and secure to them greater fixity of tenure, and to afford them some protection against continuous and unlimited enhancements. The issue here which the hon'ble member raises, and which he has a perfect right to raise, is that the Government has no business to attempt any such thing; but the right or wrong of Government intervention depends altogether on the interpretation of the Regulations on which the Permanent Settlement was framed. We all know that there is a great deal of difference in opinion regarding that important settlement. The zamíndárs contend that in dealing with this Bill as we are doing we are depriving them of those rights which were guaranteed to them by the British Government in the beginning of this century; and the argument is used that, as the claim of the zamíndár to do just as he likes with his own is indefeasible, they will accept nothing else and nothing less. I never could admit the validity of such a plea. The contention is a very one-sided view of the

Permanent Settlement, for I think that, if you examine Regulations I to VIII of 1793, you will find that there is nowhere throughout them anything more in the way of a promise than the single promise that the public demand on the land should be limited in perpetuity. The reasons for adopting that principle we know, because they are recorded in the Regulations. That promise, notwithstanding grievous provocations, has been kept for all these 90 years, and it will remain inviolate. But I assert most strongly that to urge that the whole Permanent Settlement was passed in the interests of the zamíndárs is a very one-sided aspect of the case. For, apart from the very strong reservation which the Government recorded at the time that it would, whenever it thought fit, legislate for the protection of the cultivator, we have express mention in those Regulations of the positive rights of the raiyats. It may be true, as the honourable and learned member (Mr. Evans) said the other day, that the settlement of rents between the raiyats and zamíndárs was, in 1793, a matter to some extent of contract. But two things in this connection have to be borne in mind—that the competition in those days was for raiyats to clear and cultivate the land, and the zamíndárs naturally had a motive forleniency; and secondly, there was, as found in the Regulations, the absolute barrier against undue exactions of the pargana rate which was known and respected in every district.

"I know that the zamíndárs in dealing with interpretations regarding the Permanent Settlement are very unwilling that any reference should be made to contemporary history. They have openly said so in a public document. For my own part I do not see how we can avoid a reference to contemporary opinion when we have to interpret an important Act like the one under notice; and we are justified in looking to what eminent men of the time said on this point. There is valuable evidence on the subject scattered among the pages of contemporary writings, and I will read to the Council some extracts bearing upon the issue to which I have referred:—

'Sir Philip Francis, in a Minute written in 1776, considered that the rate of assessment per bígha should be fixed for ever upon the land, no matter who might be the occupant.

'Warren Hastings wrote in the same strain on 1st November, 1776—"Many other points of enquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions,"– the term "exactions" from raiyats signifying in that day the levy of more than the established pargana rate of rent.

'Sir John Shore, in the same spirit, was not content that the Permanent Settlement should be with the zamíndár alone; he observed: "And at present we must give every possible security to the raiyats as well as, or not merely to, the zamíndár. This is so essential a point that it ought not to be conceded to any plan." The Court of Directors on 19th September, 1792, approving of these views, recognised it as an object of the perpetual settlement that it should secure to the great body of the raiyats the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zamíndárs themselves. Twenty-seven years later, the Court, on 15th January, 1819, deliberately re-affirmed:—"We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zamíndár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him."'

"Nothing, it seems to me, could be more conclusive of the privileges and position of the raiyats than these statements. They indicate at least the intentions of those in authority when the Permanent Settlement was made, and it was a misfortune for the country that they were not carried out at the time. The agitation which has been going on now for several years brings the case to a climax, and demands a final settlement on the lines of this Bill. I shall certainly support the motion that the Bill be taken into consideration, and shall oppose most strongly any motion for postponement. I am quite certain that we incur a risk in putting off the final settlement of this question; and I trust the zamíndárs will understand that it is the settled policy of the Government that the right of the raiyat to hold his land is as clear and undisputable so long as he pays a fair and reasonable rent, as is the right of the zamíndár to hold his estate so long as he pays his revenue."

The Hon'ble Mr. Ilbert said:—

"My Lord,—I do not propose at this stage of the debate to discuss point by point the objections which have been brought against the particular provisions of this measure. But there are two criticisms of a general character about which I should like to make some remarks, and I shall have a few words to say on the question of urgency, which, though it is raised more directly by the motion which stands in the name of my hon'ble friend Bábú Peári Mohan Mukerji, has been discussed in connection with the motion now technically before the Council. Of the two criticisms to which I have referred, one is that the Bill has been so changed by the Select Committee as to have lost its fundamental characteristics, and the other is that the Bill as now revised does not possess those qualities of completeness and finality which are essential to good legislation.

"I do not wish to minimize or underrate the importance of the changes which this measure has undergone, not merely since the date of its first preparation by the Rent Commission, but since the date of its introduction into this Council; but I do undertake to say that those changes are fully explained and justified by the circumstances under which the Bill was prepared and introduced, and by the nature of the subject-matter with which it deals, and that they do not in any way warrant the charge that the Bill in its present form involves a departure from the principles on which it was originally based, or that the Select Committee have lost sight of or abandoned the objects which the Government of India had in view.

"This Bill, as we all know, took its origin in a draft which was framed by the Bengal Rent Commission. Now what was the nature and scope of the task which the Rent Commission undertook? It was a task of no ordinary magnitude. It was a task singularly ardu-

ous, ambitious and comprehensive. They undertook to frame a law of landlord and tenant which should be applicable to the whole of Bengal and Bihár, with certain exceptions. They proposed to make important alterations in that law. They undertook, in so doing, not merely to amend the existing Acts and Regulations, but to repeal them and to re-enact them in a consolidated form with the necessary modifications. And last, but not least, they proposed to codify the whole of the judge-made law on the relations of landlord and tenant in the Lower Provinces. In short they undertook, at one and the same time, to amend, to consolidate and to codify. Now, in dealing with so difficult and delicate a subject as the law of landlord and tenant, an ordinary legislator thinks himself fortunate if he achieves with some degree of success any one of these three objects: that he should be able to achieve them all is more than any mortal is entitled to expect. Accordingly, when the Government of India came to consider from the point of view of practical legislation the Bill submitted to them by the Bengal Government,—which was in fact the Rent Commission Bill with sundry modifications,—one of the first conclusions at which they arrived was that it would be desirable to drop so much of it as merely codified existing law, and to leave the measure one of amendment and consolidation. I will not trouble you at length with the reasons which led me among others to this conclusion—a conclusion about the soundness of which I have never had any doubt. They were reasons which did not involve the slightest disparagement of the admirable work which had been done by the learned author of the Digest of the Law of Landlord and Tenant in Bengal, and did not imply any scepticism as to the value of codification, or as to the importance of continuing the great work which has been commenced for India by the framers of our codifying Acts. Shortly stated, the reasons were these. Apart from any doubt which we might feel as to the expediency or possibility of attempting to present in a code the effect of judicial decisions on subordinate rules or propositions of law, it was clear that up to this time the process of codification had only been applied with success to those portions of the English common law which are suitable to the circumstances of India; the general principles of the English law of landlord and tenant had quite recently been codified by my learned predecessor Mr. Whitely Stokes in that chapter of the Transfer of Property Act which relates to leases; and the legislature on passing that measure into law had expressly declared that this chapter—the chapter relating to leases—is not suitable to the relations which exist between landlord and tenant in the Mufassal. Furthermore, we held that, even if the law with which we had to deal admitted of codification, it was of the first importance to simplify and reduce in bulk as much as possible the long and complicated measure which had been laid before us by the Government of Bengal. Accordingly, as I have said, the merely codifying portions of the Bill were dropped, and, as I hold, wisely dropped; but the mere fact that this measure once professed to be a code has given it an appearance of completeness and finality which was always illusory, and which has had an unfortunate effect.

"Even in its reduced form the Bill was sufficiently long and complicated, and was in a shape—I am speaking merely of form and not of substance—was in a shape which would have made an English Minister reluctant to submit it to Parliament. For it is a received maxim of English legislation that when you have important changes to make in the law—changes which are likely to encounter much opposition or to invite much discussion—you should not attempt to combine the two processes of amendment and consolidation, because by so doing you divert the attention of Parliament and the public from the real issues before them. You raise questions which have been already settled or are of minor importance, and you thus materially impede and embarass the passage of the measure through the House.

"In this country, where the machinery of legislation works more easily and smoothly, it has always been held—whether it will continue to be so held if we have many more such notice-papers as that which has been laid on the table with reference to this Bill I cannot say, but at all events it has always been held—up to this time that the advantages to the public of consolidation outweigh what may be called the tactical disadvantages of presenting a too widely extended front for opposition and criticism; and accordingly we have, as a general rule, whenever we have had to make extensive changes in the law, applied the process of repeal and re-enactment. The Government of India did not think that they would be justified in the present instance in departing from this practice, but at the same time I am bound to confess that in the course of the discussion of this measure I have found abundant reason for appreciating the practical wisdom of the English rule. For there can be no doubt that the form in which this Bill has come before the public has tended to obscure the main issues which are raised by the present legislation, and has roused many of those ghosts of buried controversies which still hover and shriek round the Permanent Settlement Regulations and Act X of 1859. Let us endeavour to abstract our minds from those parts of the Bill which merely reproduce existing law, and those parts which embody miscellaneous amendments of minor importance, and consider what were the main defects in the existing law which the Rent Commission proposed to remedy, and what were the main remedies which they proposed to apply for the removal of these defects. The main defects were two: first, that the existing law gave, or appeared to give, to the raiyat rights which he could not prove; and secondly, that the law gave, or professed to give, to the zamíndár remedies which he could not enforce. Whether by reason of any deliberate policy of shifting tenants' holding or by reason of local customs of cultivation, or by reason of the absence of proper landmarks, but at all events in fact the raiyat was unable to prove that kind of twelve years' occupation which was necessary to give him occupancy-rights under Act X of 1859. And the zamíndárs found the process of recovering their rents through the Courts tedious, and the process of enhancement through the Courts unworkable. Want of adequate legal security for the raiyat, want of adequate legal facilities

for the landlord—those were two substantial defects which were made the subject of repeated complaints before the Commission. And at the same time that the Rent Commission admitted that there were in the existing law these defects, which impaired its efficiency as a law and prevented it from achieving the objects which it was intended and expected to achieve, the Famine Commission, looking at the subject from a somewhat different point of view, came to much the same conclusion with respect to one of these defects, and pointed out that the absence of adequate legal security for the tenant had produced and was producing disastrous economical effects.

"These, then, were the practical problems which the Rent Commission—sitting, not as codifiers or as consolidators, but as amenders of the law—had to solve:—whether they could devise in the interest of the tenants more effectual checks against liability to capricious eviction and excessive rack-renting; whether they could devise in the interest of the landlords more effectual facilities for the ascertainment and recovery of their just dues. Reasonable security for the tenant, reasonable facilities for the landlord—these were the two things which they had to endeavour to provide. Suggestions for attaining these objects poured in upon them in great abundance, and from very different quarters. It was their duty to consider these suggestions; to sift them carefully; to view them in the light of different interests and different experiences; to recommend them for adoption if they appeared to be reasonable and practicable; to reject them if they appeared to be unreasonable or impracticable. And that, Sir, is the history of this measure from its first inception to the present time. The process which has been continuously applied to it has been a carefull sifting of numerous suggestions which have been put forward with the view of meeting certain specific evils. The Government of Bengal took up the suggestions of the Rent Commission, made them the subject of a very careful examination, and then transmitted them with modifications to the Government of India. The Government of India examined with equal care the suggestions laid before them by the Government of Bengal, and, with the approval of the Secretary of State, embodied in the Bill which was introduced into this Council such of them as appeared to afford a reasonable prospect of working with success. That in the course of this process the measure should have undergone considerable modification is no matter for surprise, but at the same time is no ground of blame to the Rent Commission, no cause for imputation against the Government of India or the Select Committee of this Council. The Rent Commission would have been much to blame if, in the exercise of the duties imposed upon them, they had rejected any suggestion which appeared on the face of it to be reasonable: the Government of India would have been equally to blame if they had not incorporated in their original Bill such of the proposals laid before them, as, with the information then at their disposal, seemed to offer a fair prospect of meeting the requirements of the case; the Select Committee would have been still more to blame if they had obstinately stuck to these proposals, or had adopted any alternative suggestions which might be subsequently made by the Bengal Government, after further inquiry and examination had thrown grave doubts on their fairness or feasibility.

"There is another circumstance which has not a little obscured the real nature of the changes which have from time to time been made. In the course of the discussions which take place on a measure of this nature, ranging as it does over a considerable ground, and affecting a great variety and number of interests, it always happens that some particular proposal assumes a factitious importance, and comes to be described, in varying metaphors, as the keystone or core or kernel of the Bill. I always distrust these phrases. They usually mean that some particular feature of a measure has happened to strike the imagination of some particular writer or set of writers, to coincide specially with his or their sympathies or prepossessions, or to assume exceptional prominence from some one point of view, and when it disappears or assumes a less prominent position a cry is raised that the measure is irretrievably ruined, and that it is no longer of any value.

"There have been a good many keystones and cores and kernels of the Rent Bill. There was a time, in the earlier discussions of this measure, when the proposal most in vogue was a proposal which not unnaturally found favour in zamíndárí quarters, a proposal to devise some kind of summary procedure for the recovery of rents. This was to be the be-all and end-all of legislation on the subject of landlord and tenant. 'Give us back our Huftum and our Punchum,' said the zamíndárs, 'and all will be well. Or, at all events, if you cannot do that, put the raiyat who is sued for rent in the same position as if he had signed a bill of exchange, that is to say, had agreed in writing to pay a specified sum of money to a specified person at a specified time.' This was a form of 'facility' which was much discussed by the Rent Commission, and the conclusion to which they came about it was substantially the same as that which was subsequently arrived at by the Government of India. I spoke at such length on this topic in obtaining leave to introduce the Bill that I may be pardoned for not dwelling on it at any length on the present occasion. The conclusions to which we came were in short these; not that the difficulties complained of by the landlords were non-existent, but that the remedies suggested were superficial; that where the rights involved are obscure and uncertain, and the facts difficult to ascertain, no mere tinkering of procedure would provide a method of judicial determination which should be at once speedy and just. But at the same time I expressed a hope that when the measure came to be fully discussed other expedients for simplifying the procedure might be devised. In the course of the long discussions which have since taken place sundry suggestions for that purpose have been made; some of these were brought before the Select Committee by my lamented friend the late Rai Kristodás Pál; others have been embodied in a paper written by Bábú Mohini Mohan Roy, who was himself a Member of the Rent Commission; others again have

been communicated to me privately by my friend the Mahárájá Sir Jotíndra Mohan Tagore. The Select Committee have not overlooked or disregarded any of these suggestions. On the contrary, they have given them their most careful attention. We invited judicial officers to examine them and express their opinions upon them, and we specially referred them for the consideration and opinion of the Calcutta High Court. But the replies which we have received have been unfavourable to these suggestions. We have been told, and told on the highest authority, that they could not be adopted without serious risk of failure of justice. Under these circumstances it was impossible for us to endorse recommendations which had by the authority most competent to express an opinion upon them—I mean the Judges of the Calcutta High Court—been unanimously and decisively condemned. It would have been a satisfaction to the Members of the Select Committee, as it would have been a satisfaction to the Hon'ble Judges, if we had been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means too often employed by raiyats to harass their zamíndárs. But in the face of such strong and authoritative expressions of opinion that these suggestions were dangerous or impracticable, we could not take upon ourselves the responsibility of recommending their adoption. Some minor amendments of procedure we have indeed proposed, and I believe that they will be found useful as far as they go. But I fully agree with the deliberate opinion of the Rent Commission and of the High Court, that it is in other quarters than the amendment of procedure that the true remedy for difficulties in the realization of rents is to be found. Some of these remedies can, as the Judges point out, be provided by executive action; means of providing others are supplied by this Bill; and it is to the machinery that we propose to provide for the ascertainment and recording of obscure and disputed facts and rights, that the zamíndárs if they are properly advised, should, I believe look for a removal of the difficulties which they now experience in enforcing their rights.

"On this point, then, the views of the Select Committee are in complete accordance with those of the Rent Commission and with those which the Government of India entertained and expressed on the introduction of this Bill.

"But with respect to other matters I freely admit that, in the course of the deliberations which have taken place on this measure, the Select Committee have found themselves compelled to drop certain proposals to which at one time considerable importance was attached by their authors, and from which considerable advantages were expected to accrue. Take, for instance, the proposals as to the preparation of Tables of Rates. These proposals formed a very prominent feature of the Bill which was submitted to the Government of India by the Bengal Government and they were incorporated by the Government of India in their original Bill, though not without expressions of great doubt as to their feasibility. There was a great deal to be said for these proposals, and, if they had proved capable of being carried out, they would have simplified many questions and removed many difficulties. Therefore, I think the Government was fully justified in inserting them in the Bill which was laid before this Council two years ago and that they were entitled to a fair trial before being rejected as unworkable. The Bengal Government did give them a fair trial; they deputed special officers to try and prepare Tables of Rates on the lines indicated in the Bill; and the result of their inquiries and experiments was to satisfy both the Bengal Government and the Select Committee that the expectations once based on this particular scheme were not likely to be realized. Very similar has been the fate of the gross-produce limit. This particular proposal did not, if my memory serves me rightly, figure very largely in the earlier discussions on this measure; it was adopted by the Rent Commission, but wthout, as it appears to me, any adequate examination or consideration of the difficulties by which it was attended; it formed also part of the proposals embodied in the Bill introduced by the Government of India; but whilst I do find in the papers and speeches relating to the Bill indications of doubt as to the possibility of imposing any such general limit, or as to the propriety of the particular limit proposed, I do not find anything to show that it was regarded two years ago as being an essential feature of the measure. It was not until a comparatively late epoch that it attained the dignity of being described as the 'core' of the Rent Bill. Now, it must be admitted that it would be eminently satisfactory if we could devise some form of ultimate barrier against which the waves of rack-renting should ineffectually dash; and when the subject was discussed in the Select Committee—and it underwent a very full and thorough discussion before the Committee—there was a strong feeling on the part of the majority of the members in favour of imposing such a limit, if only a fair and workable limit could be devised. But when we proceeded to examine the facts and figures on which the particular fractional limit proposed in the Bill was based, we considered them insufficient to warrant the inferences drawn from them, and at the same time we were informed by the Bengal Government that to fix the limit at any other fraction would be to provide an ineffectual protection against that form of rack-renting which it was the object of the limit to counteract. Under these circumstances we reluctantly came to the conclusion that this was a form of check which we were not in a position to impose.

"Take, again, those provisions of the Bill which have been the subject of more and hotter controversy than, perhaps, any other of its provisions. I mean those which relate to the transferability of the occupancy-right. The object of the Rent Commission, the object of the Bengal Government in the earlier drafts of the Bill, the object of the Government of India in the Bill of two years ago, was to recognize and legalize a practice which, whether for good or for evil, either had grown up or was fast growing up in all parts of these Provinces, but to surround it with such checks and limitations as might be considered necessary or advisable for the purpose of preventing it from being used to the detriment either of the zamíndár or of the raiyat. That, I repeat, was the object which we all had in view: we

wished to recognize and confirm existing customs, to give them the express sanction of the law, but at the same time to give them a reasonable shape. We found, however, that the existing customs were so multiform that it would be impossible to devise any one general form of legal check on the right of alienation which might not reasonably be charged with causing hardship to the zamíndár in one part of the country, and hardship to the raiyat in another; and, this being so, the conclusion at which the majority of the Committee, after many intermediate experiments and suggestions, ultimately arrived was that, if varieties of custom were to be recognized at all, they had better be recognized in their entirety, and that the balance of advantages was in favour of leaving the custom, at all events for the present, unregulated by any express provision of law. In arriving at this conclusion individual members of the Committee, as would naturally be the case, reached the same goal by different paths. The question was an eminently arguable one, and was one as to which both the advocates of the zamíndárs and the advocates of the raiyat were much divided in their views,—I know for instance that the view taken of it by my hon'ble friend the Mahárájá of Durbhunga differed materially from that taken by my hon'ble friend Bábú Peári Mohan Mukerji,—and it had to be determined with reference not only to the consideration whether the right of transfer was in itself a good thing or a bad thing, but with reference also to such considerations as whether the advantages of having a positive and definite but inelastic rule outweighed the disadvantages incidental to an elastic but uncertain custom, whether the Mahájan purchaser of whom so much has been heard was a reality or a bugbear, and last, but not least, whether any discouragement which might be imposed on the practice of sale would not operate as an encouragement of the practice of sub-letting. It was under the influence of all these different considerations that we came to the conclusion that with regard to this particular matter the natural check imposed by custom and usage would probably operate better than any artificial checks which could, under existing circumstances, be imposed by law, and that the safe and more prudent course would be to abstain, at all events for the present, from positive legislation.

"There is no foundation for the suggestion that such a change as this involves a radical departure from the principles of the original Bill. Nor is there any foundation for the suggestion that we have by any of the provisions of the Bill as now revised violated any pledges which we gave on the introduction of this measure. We have been told that the power given to reduce rents in cases where a special settlement is made is inconsistent with the assurance that was given that there would be no reduction of existing rents. Now it is important to be accurate about what was actually said and written with reference to this point. On looking at our despatch of 17th October, 1882 (paragraph 17), I find that we explained our intention to be that a raiyat should not be at liberty to sue for a reduction of rent on the *sole* ground that it exceeds that indicated by the table of rates. The assurance was that rents were not to be reduced solely on the ground of their being above those shewn in the Table of Rates, and I need hardly point out that the Bill contains no provision inconsistent with this assurance.

"In my own speech on obtaining leave to introduce the Bill I referred specially to this point. What I said was this:—

'On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the Table of Rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Bihár, where we learn from recent reports that the average rates all round have been enhanced by 500 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a re-adjustment of the rates of rent, is a separate and difficult question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill.'

"I fail to discover in the Bill as now amended anything which is in the slightest degree inconsistent with any of the statements which I have just quoted. What we intend by the section to which reference has been made is that in very special and exceptional cases special and exceptional powers should be exercised.

"My Lord, I will not go through the other changes which have been made in this Bill since its introduction. The changes themselves, and the reasons for making them, have been fully and completely explained by my hon'ble friend Sir Steuart Bayley, and I have nothing to add to his exposition. I have listened sympathetically to the expressions of regret which have fallen from the lips of several hon'ble members for some of those changes; but I have heard nothing which has satisfied me that the grounds on which they were made were not good and sufficient, or that the arguments which have weighed with the majority of us in the Select Committee are likely to produce a different effect when brought forward in Council. What I wish specially to guard against is any confusion between means and ends, between matters of principle and matters of detail. Where we have seen fit to modify our views we have modified them not with respect to the general principles by which our legislation should be guided, not with respect to the objects at which we ought to aim, but with respect to the particular means which it may be necessary, expedient or advisable to adopt for the purpose of attaining those objects. The objects which we had in view in introducing this legislation were the objects which we have in view now, namely, the provision of reasonable security for the tenant, of reasonable facilities for the landlord. As to the particular form and degree of the securities or facilities which the circumstances of the case justify or require, that is a question with respect to which we may justifiably modify our views in the light of further experience and inquiry. We have given a little more in one direction, a little less in another; but the general scope and

tendency of our proposals remains what it was. Thus in dealing with the occupancy-raiyat we have lessened the area over which his rights may be acquired, but we have, at the same time, facilitated the proof of the rights to which he is entitled within that area. We have removed some of the checks to which enhancement of his rent was subjected, but at the same time we have tightened others, and have extended the period during which he is to have absolute immunity from all enhancement. Again, in dealing with the landlord, we have declined to adopt suggestions which have been made to us for taking away from him any ground of enhancement through the Courts to which, from long usage or otherwise, he may reasonably claim to be entitled. We have declined to adopt any suggestion which would have had the effect of making any of those grounds unworkable, and thus of perpetuating what has been justly described as a public scandal; we have endeavoured to give the landlord a right which could be honestly enforced through the machinery of the Courts and not dishonestly abused as an engine of oppression out of Court; and we have endeavoured to assist the Courts by indicating somewhat more clearly than under the present law the circumstances under which, and the limitations subject to which, the landlord's remedy is to be applied.

"With reference to these and several other provisions of the Bill, the question has usually been a question not of principle but of degree—a question where we should draw the line between conflicting claims, and, as is usual with boundary disputes, our decision has not been accepted with satisfaction by either party. The question which you are entitled to ask is, 'What is the net result of our proposals?' Do they give too much or leave too much to one side or to the other? The question is *not*—'Does the Bill satisfy the expectations, reasonable or unreasonable, of one party or of the other party?' but does it—to use a phrase to which some of our critics appear to entertain an insuperable objection—does it afford a fair and equitable solution of an exceptionally difficult problem, a fair and equitable compromise between claims which are conflicting and irreconcileabl? What we have endeavoured to frame has been not a landlord's Bill, nor a tenant's Bill, but a just Bill. We have endeavoured to give substantial security to the tenant without restricting more than is necessary the powers of the landlord. We have endeavoured to give reasonable facilities to the landlord wihout weakening more than is inevitable the customary privileges of the tenant. Whether and how far we have succeeded in our endeavour is a question which I leave to persons of cool and dispassionate judgment to determine. After hearing the vehement and angry denunciations by which we have been assailed on either side, they will, I am disposed to think, come to the conclusion that the Government of India has not ill discharged the duty which was imposed upon it of acting as a just an impartial arbiter between conflicting claims.

"I deny, then, that the Bill which is now laid before you involves a departure from the principles by which the Government of India was guided in its introduction. What foundation is there for the other charge to which I have referred, that it is wanting in completeness and finality? 'I had hoped,' says His Honour the Lieutenant-Governor, in his minute of dissent, 'that the legislation now in hand would have carried with it some measure of finality'; 'but', he goes on, 'in its present outcome there is scarcely the assurance which had been expected of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' 'I am unable,' says my hon'ble friend Mr. Reynolds, 'to regard the Bill in the form which it has now assumed as an adequate and final setltement of the question reised in the great controversy.'

"Sir, in one sense I admit the charge. That the Bill is one-sided, I deny: that it is not complete or final I will admit. But I will go further and say that any Bill of this kind which claimed for itself the characteristics of completeness and finality would carry its condemnation on its face. Look at the social and economical condition of Bengal at the present day. What are its most striking features? Are they not transformation, transition, growth and change? Here as elsewhere in India, and here perhaps, more than anywhere else in India, you find the past and the present, old things and new, brought into sudden and violent contact with each other, with results which are often unexpected, and which, unless there is some intervention to temper the shock, may be disastrous. You have been told with truth—and the truth is one which cannot be too often repeated or too strongly insisted on—that the Bengálí raiyat is not the same thing as the English farmer, that the Bengáli zamíndár is not the same thing as the modern English landlord, that the rules which govern, and should govern, the relations of zamíndár and raiyat are not those rules of the law of landlord and tenant with which the modern English lawyer is most familiar.

"The Bengálí raiyat is not the same thing as the English farmer; he is something widely different from him. But he presents many curious and instructive points of resemblance to the English customary tenant of some six or seven centuries ago. The rights and powers claimed by the zamíndár are not unlike those once claimed by the feudal lord of the manor; the privileges, duties and liabilities of the raiyat resemble in some important particulars those which once belonged to the English customary tenant, and which were gradually developed into the status either of the free-holder or of the copy-holder. In the phrase which is still technically applied to the English copy-holder, namely, that he holds 'at the will of the lord according to the custom of the manor,' we discern echoes of the controversies which once raged round the customary tenant of the English manor, and which still rage round the position of the Bengálí raiyat—controversies in which the assertion of high proprietary rights on the part of the landlord is set against the assertion of strong customary privileges on the part of the tenant. If we were to pursue the investigation further we should find equally suggestive analogies. The bewildering multitude of tenures with local variations of nomenclature and incidents finds its parallel in the multitude of subordinate interests in land which are recorded on the Domesday survey, the

English record-of-rights of the eleventh century. Again, it is well kown that there is no point in English legal history which is more obscure than the question of the extent to which, and the circumstances under which, alienation of land was legally recognised and actually took place before the 13th century. But in the midst of this obscurity one fact is clearly established, namely, that such alienation as took place assumed the form not of sale but of sub-infeudation or sub-letting, and that the extent to which this sub-letting was carried was distasteful to the superior landlords. We know that at the instance of the great lords a famous statute was passed to stop sub-letting; we know that while the intention of the statute was to stop sub-letting its effect was to legalize free sale, that it enabled the fee-simple tenant to alienate his interest without consulting his lord, and that it has since become the foundation of the modern English law of the sale of land. If there had been a Hansard in the days when the Statute 'Quia Emptores' became law, he might perhaps have supplied us with an additional arsenal of arguments for and against the comparative merits and demerits of sub-letting and free sale.

"However, I do not intend to weary the Council with any elaborate historical disquisition. My object in touching on these analogies between the past and the present is not to demonstrate —what has been demonstrated to satiety—that the application of the modern English landlord and tenant law to the relations of zamíndár and raiyat would be both an anachronism and a political blunder, but also to illustrate some of the exceptional difficulties which surround any attempt either to declare or to amend the law bearing on those relations. For to say that the Bengálí raiyat is still living in an age which to us Englishmen has become an age of the past, is to present only one side of the picture. There is another side to it. Side by side with the landlord who exercises, and is content to exercise, his old customary seignorial rights so far as they are compatible with the modern system of Government, we have the auction-purchaser who has bought his rights as a commercial speculation, and thinks only how he can turn them to the best advantage. Side by side with the hereditary tenant, cultivating and living on his land in the old traditional fashion, we have the enterprising planter, who has got his lease and wishes to work it so as to extract from the land the greatest possible profit in the smallest possible time. The modern theory of competition rents is jostling the old practice of customary rates; the new fashion of terminable leases is threatening to displace ancient occupancy-rights. The thirteenth century is being brought face to face with the nineteenth century, and is striving with more or less success to understand and accommodate itself to its ways. The cultivator for subsistence is giving way before, or developing into, the cultivator for profit; those who have hitherto walked in the dim twilight of custom are emerging into the hard and fierce glare of law as administered by the Courts. The ideas, habits and customs of widely different ages and widely different civilization are being thrown into a common crucible, and are assuming new and strange forms. We cannot arrest this process of change; we cannot predict with certainty the rate at which it will progress or the direction which it will take if left to itself. All that we can do is to endeavour by such means as are at our disposal to guide it in the right direction; to ease off the abruptness of the transition from the old to the new, from an age of feudalism to an age of industrialism; to bridge over the interval between status and contract; to prevent custom from being ousted too violently by competition; to see that rules of law based on commercial transactions between hard and keen men of business are not applied to the ignorant and unlettered peasant before he is able to understand them or to use them.

"Can we afford to stand aside and let things drift, trusting that they may somehow come out right in the end? Such may be a policy which would commend itself to some of the influential classes in this country, to men of the strong hand and the long purse; such is not a policy which the British Government of India has ever ventured, or can ever venture, to adopt; such is not our conception of the duty which we owe to the millions whom providence has confined to our care. We are responsible for the introduction into this country of forces which threaten to revolutionize and disintegrate its social and economical system; we cannot fold our hands and let them work in accordance with nature's blind laws. We must, to the best of our ability, endeavour to regulate and control their operations, and in so doing it is inevitable that we should occasionally interfere in a manner and to an extent which, to those whose institutions have not for long ages, undergone the strain imposed by foreign conquest or foreign immigration, may not unnaturally appear difficult to justify or explain.

"That in so doing we should be charged with ignoring or violating the laws of political economy is a matter of course. We do not ignore or violate those laws. On the contrary, the whole of our action as a State in legislation of this kind is based on a recognition and appreciation of the laws which regulate the production and distribution of wealth, just as the whole of our action as a State in dealing with famine is based on the recognition and appreciation of the laws, so far as they are discoverable, which regulate the recurrence of famines. We do not ignore these laws, but we proceed on the view that their operation is capable of being modified and controlled by human action.

"Assuming, then, that interference is justifiable and necessary, what kind of interference is possible and expedient, what kind of legislation is suitable to the circumstances with which we have to deal? Must we not admit, are we not always being compelled to admit, that it is a legislation of opportunism? For a transitional period final legislation is neither appropriate nor possible. What we have to do is to establish a *modus vivendi*, a working arrangement, not merely between conflicting interests, but between the customs, habits, ideas and ways of different ages and different forms of civilization. Our legislation must contain much that is in the nature of expedients, adjustments, compromises; it will inevitably contain provisions which will be to political economists a stumbling-block, and to lawyers—I will say even to law-lords—foolishness, but which, for all that, may be based on good sound common sense.

"Again, whilst fully acknowledging the necessity—the urgent necessity—of interference on some points, we can afford to admit the wisdom of non-interference on others. There are some proposals about the expediency and suitability of which we can make up our minds with reasonable certainty; there are others about which we do not see our way so clearly, and with respect to which we should prefer to wait a while. There may be points—I frankly admit that there are points—with respect to which the provisions of this Bill are imperfect and incomplete, and with respect to which we are leaving our successors to supplement our task. But the fact that we are unable to do all that we might have wished to do is no reason why we should not do what we can; the fact that there are evils for which no suitable remedy has yet been found is no reason for delaying to apply to other evils such remedies as may appear to be suitable; to admit that the range of human provision is limited is no unmanly confession of impotence; to acknowledge that the morrow will have its task is no ground for putting off the task of the day.

"What the Council have to consider as practical men is, not whether this is an ideally perfect measure, not whether it is a final settlement of questions between landlord and tenant in Bengal, not whether it is likely to usher in a millennium either for the zamíndár or for the raiyat, but whether it represents a step in advance, whether it does anything substantial towards removing admitted defects in the existing law, whether it does not give some substantial form of security to the tenant, some reasonable facilities to the landlord. It is because I believe that the measure, however it may fall short of ideal perfection, does embody substantial improvements in the existing law, that I commend it to the favourable consideration of the Council.

"One word in conclusion on the question which, though it is not technically raised by the present motion, has been appropriately discussed upon it—the question whether we should now proceed with the consideration of this measure or should defer its consideration until the expiration of a certain interval after the Bill has been re-published. The period of delay for which Bábú Peári Mohan Mukerji asks is a period of three months, but we all know that this practically means a delay of not less than a year, and therefore the question before the Council will be whether they will hang up the measure for another year, and thereby, amongst other things, condemn the officers of the Bengal Government and their own Committee to a re-commencement of what my friend the Lieutenant-Governor has properly described as their Sisyphean task; the former of piling up reports which are written in the summer, edited and annotated in the autumn, discussed in the winter, and shelved in the spring; the latter of renewing, under circumstances which involve a lamentable sacrifice of valuable time, discussions, the renewal of which is only rendered possible by the fact that the human memory is incapable of retaining, for more than a very limited time, the vast store of facts and arguments which have accumulated round this Bill.

"Now on what ground is this motion based? Is it on the ground that the public have not had sufficient time to consider the points of difference between the Bill which was published with the Preliminary Report, and the Bill which has now been laid on the table. My hon'ble friend Bábú Peári Mohan Mukerji has referred to the Resolution which was issued rather more than two years ago with reference to the desirability of giving greater publicity to legislative measures. That Resolution issued from my Department, and therefore I am in a special manner responsible for it. I concur entirely in every word that it contains, and I have done, and shall continue to do, all in my power to give effect to the principles on which it insists. If, therefore, the procedure which we now propose to adopt were in any manner inconsistent with that Resolution, I should be justly chargeable with inconsistency. But it is not inconsistent with that Resolution. The answer to the suggestion that no sufficient time has been given for the consideration of the Bill as now amended has been supplied by my hon'ble friend Sir Steuart Bayley, and it is this, that the alterations which have been made in the Bill since the date of its last publication are almost entirely in the nature of excision and reduction, and that we have not added any new matter of such importance as to require the opinion of the public upon it. Or is the motion before the Council based on the wider ground that the information laid before the Select Committee is not sufficient to justify their recommending the adoption of any such proposals as those embodied in the Bill? On this point, again, I need only refer to what has been said by my hon'ble friend Sir Steuart Bayley as to the exceptionally searching and exhaustive nature of the inquiries and reports on which our conclusions are based, and express in the most emphatic manner my concurrence with his opinion that the constitution and procedure of the Select Committees of this Council are entirely unsuitable for that kind of examination of witnesses which has been suggested. That there are depths of this vast subject which we have not fathomed to the bottom, that there are tracts which we have left unexplored, nobody denies; what we do say is that the information before us was sufficient, and sufficiently tested, to enable us to come to certain definite conclusions on certain important points and that it is upon those conclusions that our recommendations are based. My hon'ble friend the Mahárájá of Durbhunga claims the support of the majority of the Select Committee for the motion for delay, and says that the majority of them signed dissents from certain more or less important recommendations of the Report, and therefore must be taken to have dissented from the specific recommendation that the Bill be passed as now amended. The fallacy is obvious, and the accuracy of the assertion is easily put to the test. It will be tested shortly by the vote which is to be given on Bábú Peári Mohan Mukerji's motion. I am one of those members of the Select Committee whose signature to the Report is conspicuous by the absence of a decorating star, but on the question whether there should or should not be further delay in the prosecution of this measure I appeal with confidence to the majority of the Select Committee. To the

unflagging assiduity with which the members of that Committee have devoted themselves to their arduous labours no one is more willing to testify and render grateful acknowledgment than their chairman. That they should respond with alacrity to an invitation to a renewal of their labours one could hardly expect, unless indeed they belong to that exceptional class of mortals whose conception of Heaven is that of a place where congregations never break up, and the sittings of Select Committees never end. But in all seriousness I apprehend that their reply would be that the information laid before them, though not complete, was sufficient for the practical purposes they had in view; that further information would not be likely to bring more united counsels; that they had completed their task, whether well or ill, at all events to the best of their ability; and that another year's delay would not be likely either materially to enlarge their knowledge, or materially to modify their conclusions.

"As for those hon'ble members to whom the privilege or penance of sharing in the deliberations of the Committee has not been extended, and who must therefore content themselves with a broad and general view of the measure which is laid before them, I would ask them merely to consider whether the measure may not, in its present shape, be fairly regarded as a substantial and honest piece of work, and whether the advantages which might possibly arise from further inquiry and discussion are not far outweighed by the disadvantages necessarily incidental to the prolongation for an indefinite period of a state of uncertainty, tension and irritation which is in the highest degree prejudicial to the interests of landlord and tenant alike."

His Excellency THE PRESIDENT said :—"I do not think it necessary that I should trouble the Council with any observations of my own at this stage of our proceedings. I shall have ample opportunity, when we come to discuss the several points in this Bill with respect to which amendments are to be moved, of expressing my opinion in regard to them. I will therefore content myself by saying that, although it is likely that during the course of our deliberations this Bill will be considerably improved in many of its particulars, I have no hesitation whatever in giving to its general features my cordial and sincere support. I have convinced myself that it is, as my hon'ble colleague has just said, a very honest and conscientious piece of work. I am quite certain that those who have engaged in advancing it to its present stage have been actuated by the sole desire of doing equal justice to all those interests which are dealt with under the Bill. It cannot be seriously urged that this Council has not a right to legislate in the direction proposed. It so happens that I became Under-Secretary of State for India while the legislation which resulted in Act X of 1859 was still under discussion, and I then came to the conclusion, which further examination has only confirmed, that it would be idle to contend that legislation of this description is any invasion whatever of the rights accorded to the zamíndárs under the Permanent Settlement. If I thought that any clause of the Bill interfered with rights which have been granted to any class of Her Majesty's subjects in India by the Imperial Government, I certainly would not be found among its supporters; but on the contrary, I believe that this Bill is in perfect harmony with those principles which inspired the authors of the Permanent Settlement; and am quite certain that hereafter, when the present controversies have subsided, even those who consider their interests most injuriously affected by what it is proposed to do, will acknowledge that this legislation has benefitted the agricultural interests of the country. With regard to the special point which is before us, namely, whether or not the present Bill should be hung up for another year, I can only say that, in the presence of the all but unanimous opinion which has been delivered by my colleagues in favor of proceeding at once to the immediate consideration of the Bill as amended by the Select Committee, it would be impossible for me, even if I myself did not share that opinion, to undertake the responsibility of delaying a measure, the postponement of which, I am told by so many persons competent to speak with authority on the subject, would be so disastrous. In conclusion I may observe that I for one have listened with the greatest interest and pleasure to the discussion which has taken place. Although I have certainly done my best to acquaint myself with all the facts and arguments bearing on this question as far as they are contained in the voluminous literature connected with this subject, this is the first occasion on which I have had the advantage of hearing it discussed by persons so capable of handling it. I have been specially struck with the moderation, the ability, the temper and with the eloquence with which my several colleagues have placed us in possession of their respective views, and I may be permitted to add that the Native members of this Council were certainly not those who have shown the least ability in dealing with the question."

The Motion was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the Bill as amended by the Select Committee to which it was referred be re-published, and that the consideration of the measure by the Council be deferred for at least three months from the date of its re-publication.

He said the hon'ble members of the Council were already in possession of the reasons why he considered such a course desirable. If the opinion of hon'ble members was that the re-publication of the Bill at that stage was inexpedient, he would ask whether His Excellency the President could not see his way to put off the consideration of the amendments on the provisions of the Bill for two or three weeks, with a view to enable hon'ble members who were not members of the Select Committee to study the amended Bill, and to enable English-knowing landlords and tenants to give their opinions on the subject.

The Hon'ble SIR STEUART BAYLEY pointed out that the proposition of the hon'ble mover of the amendment simply amounted to this, that the postponement of the Bill for two or three weeks meant its postponement for one year. This, he presumed, was open to the same objection as the first amendment. As had also been pointed out by the Hon'ble Mr. Gibbon, any

postponement of the measure would lead to the continuance of the agitation against the Bill. For these reasons he would ask the Council to reject the amendment.

The amendment was put and negatived.

The Council then adjourned to Wednesday, 4th March.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 4th March, 1885.*

## BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble the MAHÁRÁJÁ OF DURBUNGHA said :—"The Council will perhaps permit me to make one or two general observations upon the amendments which stand in my name. I have determined to withdraw a very considerable number, because I am unwilling to take up the time of the Council in urging amendments which I see from the course that the debate has taken would have very little chance of being accepted. The remaining amendments are, I think, reasonable ones, and such as I may fairly hope this Council to accept. The Bill, as your Lordship is aware, has made very serious inroads on the rights and privileges of the zamíndárs. A very general but most erroneous impression prevails that the Select Committee have made great concessions to the zamíndárs. The zamíndárs are certainly indebted to the Select Committee for resisting certain novel proposals, which, as the hon'ble member in charge of the Bill has told us, were urged with all the authority and ability of the Government of Bengal. But it is difficult to understand how the successful resistance of these proposals can be considered as concessions to the zamíndárs. There is hardly a clause of the Bill which does not change the law to their disfavour. Now the object of my amendments is not to ask for concession to the zamíndárs, but to maintain the existing law as it stands at present. Those who advocate change are bound to show the necessity of the proposed innovation. Where serious alterations have been made in the existing law, and where these alterations could only be carried in the Select Committee by a narrow majority, this Council ought, I conceive, to reject such alterations, unless their necessity is clearly and conclusively shown. I hope therefore that the Council will give to me a fair and impartial consideration, and that, as moderate men, you will vote for the maintenance of the existing law, unless you are satisfied of the absolute necessity for innovation."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA then by leave withdrew the following amendments :—

That in line 1 of section 1, clause (2), of the Bill, after the words "on such date" the words and figures "after June, 1885" be added.

That in line 5 of clause (3) of the same section, for the words "Town of Calcutta" the words "limits of any Municipality" be substituted.

That in the same clause, after the words "the Division of Orissa" the words "the Division of Bhagalpur" be added.

That in the same clause the words "the Division of Chittagong" be added.

That in the same clause the words "the Division of Dhúká" be added.

That in the same clause the words "the Division of Rajsháhi" be added.

That in the same clause the words "the Presidency Division" be added.

That in lines 8 to 12 of the same clause the words "and the Local Government" to the end be omitted.

That to the same clause the following proviso be added :—

"Provided that, in case the greater portion of an estate is situated in a tract to which this Act does not apply, the whole of such an estate will be deemed for the purposes of this Act to be included within such excluded tract."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that to clause (3), section 1, the following further proviso be added :—"Provided that this Act shall apply only to land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." He said :—

"MY LORD,—The entire justification for this measure of legislation, it may be granted, has been the supposed necessity of strengthening the position of the cultivator. The Act now in force, Act VIII of 1869 (B. C.), and its predecessor, Act X of 1859, which we now seek to supersede, did only apply to land which was the subject of agricultural or horticultural cultivation, or was used for purposes incidental thereto. If hon'ble members will turn to Bábú Jogendranath Maulik's edition of Act VIII of 1869 (B. C.), they will find the following proposition established by the decisions of the High Court, namely, that Act X was not intended to apply to any land except land of which the main object was cultivation; that the occupation intended to be protected thereby was occupation of land considered as the subject of agricultural or horticultural cultivation and used for purposes incidental thereto, such as for the site of the homestead, the raiyat or *mali's* dwelling-house. It did not include occupation, the main object of which was the dwelling-house itself, and where the cultivation of the soil, if any there were, was entirely subordinate to that; that lands leased for the purpose of building a house or a church were not the subject of the legislation of the Act of 1859, and therefore no right of occupancy could be acquired thereunder in such holdings; that no right of occu-

pancy could be acquired in a *julkur* by a tenant in possession for a series of years; that the provisions of that law did not apply to a tank used only for the preservation and rearing of fish; that a right of occupancy was not acquired in a tank when a tank was the principal subject of the lease, and only so much land passed with the tank as was necessary for it, namely, for the banks; but where the land was let for cultivation, and there was a tank upon it, the tank would go with the land, and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant thereto. I submit, my Lord, that my amendment fairly summarises the result of all these decisions, and should therefore be accepted as a re-enactment of the present law. In the Digest, Mr. Field attained the same goal by the following definition of the term 'land':—

'Land, when applied to land cultivated or held by a raiyat, means land used or to be used for agricultural or horticultural purposes. *Explanation.—Bastu*, or homestead land, is land used for agricultural purposes when it is occupied by a raiyat if the rent of such *bastu* land is payable to the same landlord under whom such raiyat holds his cultivated land.'

"It is true, as has been observed by the Hon'ble Law Member, that the chapter treating of leases in the Transfer of Property Act of 1882 applies to all leases excepting leases for agricultural purposes, but the language of the 117th section of the Act is very peculiar:—

'None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may, by notification published in the local official *Gazette*, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force. Such notification shall not take effect until after the expiry of six months from the date of its publication.'

"My Lord, I am unwilling to allow a matter of such importance to be at the mercy of notifications in the Gazette, and I would, therefore, ask this Hon'ble Council to re-enact the provisions of the present law. I had already, in suggesting a previous amendment, gone some way into the question. To a certain extent they overlay each other. The previous amendment which I had intended to move was to save all lands within the municipal limit from the operation of this Act, irrespective of the object of the occupation. The object of the present amendment is to exclude all land in non-agricultural occupation, wherever situate, from the operation of this Act. In the majority of instances the result would be the same, for the principal object of holding within municipal limits is not agriculture or horticulture, and similarly, on the other hand, in the open country the majority of holdings are agricultural. But in either case the change would be a fair recognition of a part of the existing law in favour of landlords, which I do not think has been the object of serious complaint, which professedly is outside the scope of the present legislation, and to which the principal reasons assigned in favour of this legislation are wholly inapplicable. I am glad to find that this was a subject which drew the attention of our hon'ble Colleague, Mr. Goodrich, in the course of the debate upon the motion of the hon'ble member in charge to take this Bill into consideration; and I have no doubt that on a little reflection this amendment will commend itself to the approval of your Lordship and of the other members of this Hon'ble Council. We are legislating now, be it remembered, for the cultivators of the soil, and not for the labourers of towns, who have no interest in land, and by the custom of the country as much as by the laws of political economy the owner of land in the midst of urban populations, as well as the proprietor of land used for non-agricultural purposes, had made what terms he chose with the occupants under him without at all entailing those risks of administrative difficulty which we are told justify this new departure from the ancient custom and land law of the country passing by the name of the Bengal Tenancy Bill."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I beg to support the amendment which has been just made. I think that it is in the interest of the whole country that a law which is intended to simplify and regulate the relations between landlords and tenants should be confined solely to lands which are held for agricultural or horticultural purposes. The Council will be pleased to observe that both Acts X of 1859 and VIII of 1869 extended to the whole of the territories under the Lieutenant-Governor of Bengal, and yet nevertheless the High Court has repeatedly held, both in Full Bench and in Divisional Benches, that neither of these laws extend to municipalities. That being so, I submit it is very desirable that the proposed law should not concern itself with lands which are held simply for dwelling-houses, or for purposes of manufactories, hâts or markets, and not for agricultural and horticultural purpases."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment, because it seems to me to go much further than is justified by the existing law or the facts of the case, and because I think that if it is carried it will have the result of nullifying, in a great measure, the Bill now before the Council. The question of the use of land for agricultural or horticultural purposes was discussed with much learning by Mr. Justice Field in his note appended to the Report of the Rent Law Commission, dated 29th December 1879, and the Commission which discussed the matter were very guarded in the language they used. They said in paragraph 11 of their Report that 'certain portions of Act X have been construed to apply only to lands used for agricultural or horticultural purposes. Whether the remaining portions are limited in their application is a broad question which has never been settled.' And they went on to say that 'it has never been doubted that the rents of tenures are recoverable under these Acts (X of 1859 and VIII of 1869), and these commonly include much more than land used for agricultural purposes.' And consequently the Rent Law Commission in their draft Bill introduce a special definition of 'land' which they extended to certain portions of the Bill, with reference to land other than agricultural or horticultural. It has been said that there are cer-

tain decisions of the High Court showing that Act X of 1859 did not apply to non-agricultural lands. With reference to this, it must be remembered that Act X of 1859 was not substantive law, but merely a Procedure Act. But there is a further objection which goes to the root of the question, and that is, that if the amendment were carried it would have the effect of excluding from the operation of the Bill not merely all waste lands, but all lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is, in my opinion, better for the Council to leave the question to be decided by the Courts."

The Hon'ble MR. AMÍR ALÍ said :—" I would have been inclined to support the amendment if it had been differently worded, but, as has been pointed out by the Hon'ble Mr. Reynolds, if the amendment is carried it will exclude from the operation of the Act such lands as are used for the time being for grazing or pasturing purposes, and waste lands let to a raiyat with other lands for purposes of cultivation. Of course, I perfectly understand the reason which induced the Hon'ble the Mahárájá of Durbhunga, and the Hon'ble Bábu Peári Mohan Mukerji, to endeavour to exclude from the operation of the Bill such lands as were used for manufactories and building purposes. By allowing the section, however, to remain as it is, we avoid greater risks than those the amendment proposes to cover. If any difficulty arises in its practical application, the question will have to be viewed on the broad basis of expediency. I think the amendment will give rise to difficulties unless the wording is sufficiently widened to include other lands besides those used for agricultural and horticultural purposes."

The Hon'ble SIR STEUART BAYLEY said :—" The Council has to deal with this amendment as it stands. The Hon'ble Mr. Reynolds has pointed out that it will have the effect of limiting the raiyat's right of occupancy, as he would thereby lose the right as to all waste lands and lands not used for agricultural and horticultural purposes. I may point out also that the effect would be to remove from the scope of the Bill, which deals with tenures generally, all such parts of a tenure as may be used momentarily for other purposes than agriculture or horticulture. It is much safer to trust to the Courts to apply the law to these cases. I therefore entirely support the Hon'ble Mr. Reynolds' objection."

The amendment was put and negatived.

The Hon'ble the MAHARAJA OF DURBHUNGA by leave withdrew the following amendments :—

That for clause (7) of section 3 of the Bill the following be substituted :—

" 'Tenure' means the interest of a person holding immediately or mediately under a proprietor and above a raiyat."

That in line 2 of clause (16) of the same section, after the words " any other officer" the words " of not less than ten years' standing" be added.

That in line 2 of clause (17) of the same section, after the words " any officer" the words " of not less than ten years' standing" be added.

The Hon'ble BABÚ PEARI MOHAN MUKERJI moved that sub-section (5) of section 5 be omitted. He said :—

" The sub-section runs thus :—

'Where the area held by a tenant exceeds 100 standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown.'

" Hon'ble members are aware that the practice of exchanging written engagements between the tenant and his landlord did not heretofore obtain in these provinces to a large extent. The result of the presumption would, therefore, be in most cases to convert raiyats holding more than 100 bíghás of land into tenure-holders. By the operation of the rules of succession the country would soon be presented with the spectacle of tenure-holders possessing only 15 or 20 bíghás of land, and following their own ploughs in the fields. But other and more serious consequences would also follow such a conversion. Before the question, whether a man is a raiyat or tenure-holder, is judicially determined, the status and rights of his sub-raiyats would remain in great uncertainty, and the Courts would find the greatest difficulty in determining what provisions of the law would apply to cases of ejectment or enhancement of rent instituted by him; whether, for instance, his sub-raiyats should be treated simply as sub-raiyats or as occupancy-raiyats. In every such suit the Court must bring in the zamíndár as a party, and decide the preliminary question before it can proceed with the actual merits of the case. Great difficulty would also arise in determining the rights of parties. When a zamíndár wishes to make an improvement which embraces the lands of such a raiyat along with the lands of other raiyats, would the tenure-holder *in posse* be entitled to claim to make the improvement himself? The Bill provides for no such case. The same complications will arise when such a raiyat wants to establish a mart or make manufactories on his land. Viewed in whatever light, it is clear that this rule of presumption would lead to enormous litigation."

The Hon'ble SIR STEUART BAYLEY said :—" I must point out to the Council that the effect of the presumption has been greatly misapprehended by the last speaker. It is not the case that its effect would be to convert raiyats holding more than 100 bíghás into tenure-holders Apparently what he objects to really is not the presumption but the attempt to assist the Courts in deciding whether a man is a tenure-holder or a raiyat at all. The question at issue in the first instance is whether a man is a raiyat or a tenure-holder: well, all that he said about the landlord being dragged into Court depends upon the uncertainty the Court would feel as to whether a man is a tenure-holder or a raiyat. If you cut out this presumption the uncertainty remains; the landlord would be just as much dragged into Court as be-

fore. Consequently the retention of this presumption would make no difference, so far as the necessity of the landlord being a party to the suit was concerned. There was, however, a real reason for the presumption, and it was this. The question has constantly to be decided both by Courts and by Settlement-officers whether a man is a raiyat or a tenure-holder. Now, we do not absolutely define a tenure-holder, but we describe him as a person primarily who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it, and we describe a raiyat as primarily a person who has acquired a right to hold land for the purpose of cultivating it himself. The first thing then which the Court has to do is to ascertain whether a man is a tenure-holder or a raiyat. If the land was given for the purpose of collecting rents, then he is a tenure-holder. We tell the Courts the first thing they are to look to is local custom, but local custom may not always be sufficient to guide them, and then they have to ascertain what was the original object of the tenancy. There is still some difficulty, and it is one which experienced officers tell us it is essential the Courts should be able to decide. Well, in that case we fall back on the arbitrary presumption derived from the area of the holding. It will, I suppose, be admitted that in nine cases out of ten, where a man takes 100 bighás of land, he cultivates it through others, and only cultivates a small portion of it directly. The general consensus of opinion is that the standard is more than fair. Having thus explained how the presumption will work, I would ask the Council to consider how far it is reasonable to say that it would convert every raiyat into a tenure-holder. It will do nothing of the kind. It will in cases of real doubt give the Courts that assistance of a presumption which has already been decided by the High Court to be in principle a presumption by which the Courts should be guided. It will not really go beyond this. Then there is a point made in the dissent of the Hon'ble Mr. Gibbon that we ought to include sub-letting in the presumption. The difficulty is this, that if a man sub-lets only one or two bighás of land out of 100 bighás, that has no bearing on the original question the Court has to look to. Unquestionably if he sub-lets a large portion of his holding, then the Court will take this as an indication of the probability that he got it for the purpose of sub-letting; but this points not to basing the presumption on some portion, however small, of the holding being sub-let, but rather to drawing an arbitrary line and basing it on the sub-letting of a half, a quarter, or three-quarters of the holding. This the Select Committee objected to as improper in itself, and as introducing an element into the litigation which is particularly difficult to prove. Leaving the presumption as it is, based on area alone, we thought the Courts would always be able to take the facts into consideration. On the contrary, if you clog it with the condition that there must be an arbitrary proportion of area which must be sub-let, you put the Court into the difficult position of finding out exactly what proportion is sub-let, and this is not easy to prove, while it is on the other hand a condition which the raiyat can very easily evade. I therefore hope the Council will see their way to uphold the section as it stands."

The Hon'ble Mr. Evans said:—"I agree with the hon'ble member in charge of the Bill. The question whether a man is a tenure-holder or a raiyat is often very difficult to decide owing to the difficulty of obtaining proof as to the original conditions of the tenure or holding when it is ancient. It being a matter of fact—so far as we can ascertain—that the majority of persons holding over 100 bighás are tenure-holders, it was thought right by the majority of the Select Committee to lay down a rule for the guidance of the Courts in cases in which no satisfactory evidence was forthcoming as to the nature of the tenure or holding. That rule is that, until evidence to the contrary is given, every holder of over 100 bighás shall be treated as a tenure-holder. But if it is the interest of either party to rebut this presumption, they are at full liberty to do so. The section has no further effect than this and is I think useful and fair."

The Hon'ble Mr. Reynolds said:—"I wish to add my testimony to what has fallen from the hon'ble member in charge of the Bill. Speaking as a member of the Board of Revenue, I can say from my experience that no question has been more unsettled and has given more trouble than the question of whether a tenant is a tenure-holder or a raiyat, and in reference to this class of cases the law would give some sort of guidance in coming to a conclusion."

The Hon'ble Mr. Gibbon said:—"I will support the amendment, although I cannot agree with the reasons adduced by the hon'ble mover in support of the motion. In fact, I think the answer given by the hon'ble member in charge of the Bill is absolutely correct as far as it goes. But at the same time I cannot agree with the hon'ble mover in his view of the probable effect put on the section. I agree to the amendment of the section, because it is absolutely wrong in principle and contrary to fact. Under the Bill a tenure-holder means primarily a person who has acquired land for the purposes of collecting rents or bringing it under cultivation by establishing tenants on it: a raiyat means primarily a person who has acquired land for the purpose of cultivating it himself or by members of his family or by hired servants.

"The question as to whether a tenant is a tenure-holder or a raiyat is one which depends not on the area of the holding but on the conditions and purport for which it was acquired. There are many tenures of less than 100 bighás, and many occupancy-holdings of over 100 bighás. A dispute may arise as to whether a tenant is a tenure-holder or occupancy-raiyat, between a proprietor and tenant, between a tenure-holder and occupancy-raiyat, and between an occupancy-raiyat and his sub-tenant.

"It may at one time be to the interest of the tenure-holder, with a view to obtain a permanent tenancy, to declare himself to be a raiyat; it may be to the interest of an occupancy-raiyat to attempt to acquire the position of a tenure-holder. When deciding whether a tenant is a tenure-holder or occupancy-raiyat the Court will have to consider the object for which the

tenant acquired the holding. If the presumption is to hold good, if holdings of more than 100 standard bíghás are to be presumed to be tenures until the contrary is proved, it will also be presumed that holdings of under 100 standard bíghás are occupancy-holdings. It should be remembered that a sub-raiyat cannot acquire occupancy-rights in the land, and the effect of this presumption will be that tenants holding land on tenures of under 100 bíghás will have to prove their right to hold as occupancy-tenants by first proving the conditions under which their landlord acquired his title—an impossibility.

"In many districts the local measurement varies—every tuppa, every village has its own measuring rod. Take for instance my district; in some parts it is three standard bíghás to the local bíghá, in some parts ten. The consequence will be that until a preliminary investigation is held and it is decided whether the holding is over or under 100 standard bíghás no case can proceed.

"The sub-section is wrong in assumption and contrary to fact; it will retard suits instead of assisting the Courts; it will not assist a single person to set up a valid title; it may induce many to claim rights they do not possess. It will induce many to do wrong; no one to any good."

His Honour THE LIEUTENANT-GOVERNOR said:—"The question before the Council is as to the presumption as to the status of a tenure-holder from the area of his holding. It is one which has been the subject of much discussion, and though I don't mean to go over the whole subject in reference to what has been written or considered before, I would point out that there is a general consensus of opinion in favour of the adoption of the proposal contained in the Bill. It may be noticed that in the view of several authorities, whose opinions deserve respect, the 100 bíghás is thought too high a limit; while again there are many excellent authorities, both executive and judicial, who contend that the presumption should be changed into an absolute rule, not be a matter of presumption. The Select Committee, however, prefer to adopt the proposal of presumption, and I need not add anything to the arguments of hon'ble learned members of this Council, who from their experience in our law courts are in the best position to say that the section as it appears in the Bill will facilitate the judicial decision of the difficult question, which often arises, whether a holder of land is a tenure-holder or a raiyat. I have not been able to follow the arguments of the Hon'ble Mr. Gibbon, because I was not able to hear all that he said. But on one point, as to the uncertainty attending the ascertainment of the quantity of land held by an individual owing to the system of measurement differing in almost every village, I would point out that the rule laid down by the Bill is that the land shall be measured by the standard bíghá; therefore, that argument would not hold good. I shall certainly oppose the amendment and support the section as it stands."

The amendment was put and negatived.

The Hon'ble MR. GIBBON by leave withdrew the amendment that section 5, sub-section (5) of the Bill be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that Chapter III be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 8 be omitted. He said:—"This section gives the Court power to direct that the enhanced rent, instead of coming into operation at once, shall increase yearly by degrees until the amount decreed has been reached. When a Court on the evidence before it considers that a tenant is bound to pay rent at a certain figure to his landlord, I do not see what circumstances it would take into account for ordering progressive enhancement. The provision deprives the landlord of a portion of what the Court has judicially found to be his just due, and it is, therefore, wholly indefensible. I shall read to the Council the remarks made on it by Lord Bramwell:—

'Now, what consideration would influence the Court I do not know. Whether if the tenant had got half-a-dozen children, it would be a hardship upon him to have his rent suddenly enhanced, I do not know. I do not see how that can be taken into account, or, indeed, what could be taken into account really under such a clause as that.'"

The Hon'ble MR. EVANS said:—"I think there are certain cases in which it is desirable to give the Courts this discretion, but I don't think they ought to exercise it generally. Where, from the peculiar circumstances of the case, an enhancement of from 100 to 400 per cent. is decreed, it is very desirable that the Courts should exercise this discretion so as to enable the tenant to adapt himself to so complete an alteration of his circumstances and to avoid immediate ruin."

The Hon'ble MR. REYNOLDS said:—"I think this section makes a very reasonable provision; it was a recommendation of the Rent Commission, who introduced it into their Bill; and there are special reasons for retaining it with reference to tenures, because, although it is practically uncommon that the rent of a tenure is enhanced, yet when it is enhanced it is a common thing to enhance it very largely. In a case referred to in the report of the Dacca Conference, the rent of a tenure-holder was enhanced from Rs. 1,326 to Rs. 5,062 at one stroke, and it seems equitable to give the Courts a discretion to declare that the enhancement should be spread over several years."

The Hon'ble MR. AMÍR ALÍ said:—"I will support the retention of the provision in the Bill for the same reason that I supported it in Select Committee. From some experience which I have had of tenure-holders in Eastern Bengal, I think this provision will be of the greatest boon to them. As has been already remarked, the rents of these tenure-holders have often been enhanced in such a way as to cause a great deal of hardship, and the absence of any discretionary power in the Courts has been much felt in reference to these cases. A merely discretionary power reserved to the Courts can hardly injure the zamíndár."

The Hon'ble SIR STEUART BAYLEY said :—"I wish to say a few words in support of the objection taken by the Hon'ble Mr. Reynolds to this amendment. He has explained that it is wanted in behalf of tenure-holders. But the hon'ble mover of the amendment has supported it on the principle laid down by Lord Bramwell. If Lord Bramwell had experience of rent-suits, he might perhaps have understood the reason for such a provision. He would have known that the principle was one which was admitted in the enhancement of revenue in temporarily-settled estates by the Government. And the reason of it is simply this, that although a man might hold land at a low rate for some time, yet when his rent was enhanced it was not in the interest of the Government or the proprietor to reduce that man's means of subsistence—that what he had to spare from the means for the support of his family was the amount of money he had been in the habit of giving to the cultivation of the holding. If the whole of the enhanced rent was demanded at once, the chances were that his cultivation would be injured, that he would have to sell his bullocks and to reduce his capital. It is not desirable therefore to reduce his agricultural resources too suddenly. That is the meaning of the section, and that is why I ask the Council to support its retention."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that section 9 of the Bill be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved by way of amendment that the word "ten" be substituted for the word "fifteen" in section 9. He said :—"The minimum period during which an enhanced rent should obtain currency was fixed at 10 years in the draft Bill of the Rent Commission, in the Hon'ble Mr. Reynolds' Bill, in the Bill which was finally submitted by the Government of Bengal to the Government of India, and also in the Bill which was introduced in this Hon'ble Council in March, 1883. The change from 10 to 15 years was made for the first time by the Select Committee last year. Considering the rapid progress the country is making, and the prospect of a steady rise in the price of agricultural produce, the change is wholly indefensible. Whenever there is a rise in prices, not temporary or casual, the landholder is entitled to an enhanced rent, that is, to such rent as would represent the changed value of money, and it would be depriving him of his just dues if an arbitrary limit be imposed on his right to get that rent. For the purpose of preventing frequent repetitions of claims for enhancement of rent, it would be enough if it be provided, as was done in the original Bill, that a rent once enhanced shall not be again enhanced within 10 years of the previous enhancement. But as a matter of fact grounds for enhancements not unfrequently arise at shorter intervals. I find this clearly recognised in a rule regarding settlements issued by the Board of Revenue under the authority of the Government of Bengal. With your Lordship's permission I shall read to the Council the rule in question :—

'Where, however, a settlement has fallen in, or is likely to fall in, before arrangements for a fresh settlement are or can be completed, the Collector should, if the estate belong to an individual, ordinarily settle it summarily year by year, securing in the engagements any increase of revenue which the extension of cultivation or other enhancement of assets, ascertained by summary enquiry, may seem to justify. If the estate be the property of Government, it should, as a rule, be taken under khás management.'

"But whatever might be the rule as regards settlements made by Government, I think private proprietors should not grumble if the 10 years' restriction be imposed in cases of enhancement for rise in price of produce."

The Hon'ble MR. REYNOLDS said :—"The question raised by the amendment seems to be merely a question of substituting 10 for 15 years. I suppose it will be admitted that we ought to have the same rule for tenure-holders and for raiyats, because, as the tenure-holder has to a certain extent to depend on the rent he realises from the raiyats, it seems naturally to follow that his rent should not be increased at more frequent intervals than he can increase the rents of his raiyats; and the Select Committee agreed that the term of 15 years, which is only half the term recommended by the Famine Commissioners in their report, should be applied to tenure-holders. But with regard to what the hon'ble mover of the amendment said as to the practice of the Government, and the instructions contained in the Board's rules, in respect to the settlement of Government estates, I wish to represent that the passage the hon'ble member quoted simply referred to purely temporary arrangements which might be made at the end of the expiry of one settlement and until a fresh settlement has been concluded. The rule provides that in such cases a summary settlement should be made year by year, because we hope every year to make a final arrangement; and there is nothing unfair in saying that such a summary settlement is not to be made on the old jama but on the increased cultivation and profits. But the regular term of settlement in Government estates is for 30 years; so that if the hon'ble member relies on the precedent of Government action in the matter, his contention is not supported. I think the section should be allowed to stand as it is."

The Hon'ble Mr. GIBBON said :—"I support the motion on the ground that there is no necessity for it in this chapter of the Bill. But at the same time I consider that if any provision of the kind is necessary, the term should be increased rather than decreased. But it is not necessary in this chapter, and imports an arbitrary limit. As far as I can see, a tenure-holder can only be enhanced on two grounds—where the rent of the tenure is below the customary rate payable by persons holding similar tenures in the vicinity, and, where no such customary rate exists, up to such limit as the Court thinks fair and equitable. Therefore, if a tenure is once enhanced, it can only be again enhanced when the rent is below the rental of other tenures in the neighbourhood or when the Court thinks such enhancement is fair and equitable. It is therefore unnecessary to put any term to the enhancement of the rent of tenures".

His Honour THE LIEUTENANT-GOVERNOR said :—"I don't think any question has received greater consideration at the hands of the Select Committed than this. Recurring demands of

th ezamíndár for enhanced rents have been the cause of most of the discontent, ill-feeling and litigation which prevails throughout the country; and the adoption of a limit in this chapter has followed the rule which it was thought desirable to declare in the case of the raiyat. There could be no distinction between the two. Fifteen years, as the Hon'ble Mr. Reynolds has pointed out, is just half the term which was recommended by the Famine Commission, whose report has furnished many points for consideration in connection with this Bill. I am glad, however, to find from the testimony of the Hon'ble Mr. Gibbon that if any alteration is made, it should rather be in the direction of increasing than of reducing the term of years."

The Hon'ble SIR STEUART BAYLEY said:—" I understand the hon'ble the Mahárájá of Durbhunga to move that section 9 be omitted, and the Hon'ble Peári Mohan Mukerji to move as an amendment that the period of 15 years provided in the section be reduced to 10 years. I don't therefore understand whether the hon'ble mover of the amendment is supporting the original motion. Speaking of the motion itself, I think it ought to be rejected, because then a landlord may enhance the rent of a tenure-holder every year, and there would be absolutely no check upon him; it would certainly cause the tenure-holder an enormous amount of hardship. Then, as to what the hon'ble mover of the amendment said as to this section having had no place in the first Bill or in the Bill which was introduced in the Council. The real fact is that the section was there, but the period has been altered to fifteen years; and the reason for the alteration in this chapter is a very simple one. The raiyat from whom the tenure-holder receives his rent is protected from enhancement for fifteen years; it would be unjust therefore not to protect the tenure-holder for the same period. If he cannot enhance his rents more than once in 15 years, then his dues to the superior landlord, which are paid out of these rents, should not be enhanced more frequently. The real question is—What is the proper term of protection for raiyats? It must be the same term for tenure-holders as you give to the raiyats, and when we come to the amendment on that section I shall be prepared to defend the period of fifteen years given to the raiyats. In the meantime I would ask the Council to observe that, as had already been forcibly pointed out, we have taken only half the term recommended by the Famine Commission, namely, the term of thirty years, which prevails in the settlement of Government estates. I therefore oppose both the amendment and the original motion."

The amendment was put and negatived; and the original amendment was by leave withdrawn.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 4 and 5 of section 10 of the Bill, the words "consistent with the provisions of this Act and" be omitted.

The Hon'ble the MAHÁRÁJÁ of DURBHUNGA moved that lines 4 and 5 of section 10 of the Bill be omitted, and the following proviso be added to the section:

"Provided that in case of contracts entered into since the commencement of this Act, a condition should be one consistent with the provisions of this Act."

The Hon'ble SIR STEUART BAYLEY having declared his willingness to accept this amendment, it was put and agreed to.

The Hon'ble the MAHÁRÁJÁ OF DURBHANGA moved that section 11 be omitted. He said:—" I think the question of the transferability of a permanent tenure had better be left to local custom in the same manner as with regard to occupancy-holdings."

The Hon'ble MR. REYNOLDS said:—" I do not think the question of the transferability of permanent tenures rests on the same basis as that of occupancy-holdings. The transferability of a permanent tenure is a generally accepted principle. Section 13 of the Bill of the Rent Commission declared that all permanent tenures should be hereditable, devisable and transferable, and in their Report the Commission said that they had merely stated what they believed to be in accordance with the accepted usage of the country. The only case in which a permanent tenure is noticed in the Digest as not being transferable is the case of the ghatwali tenure, and this is covered by section 181 of the Bill. In all other cases the transferability of a permanent tenure is an accepted principle, and I do not see why the Council should not recognize this in the Bill."

The Hon'ble MR. AMIR ALI said:—" Every word which I have said with reference to the expediency of making occupancy-tenures transferable applies with greater force and reason to making permanent tenures transferable. The amendment proposed will have the effect of doing away with the established custom, which exists almost in every district, with reference to every description of tenures. With the exception of the one class of tenures mentioned by the Hon'ble Mr. Reynolds, I do not know of any tenure which is not transferable at present. If this motion is carried, all tenure-holders who at present exercise the right without any question or objection from the zamíndár will lose the right altogether. I therefore oppose the motion."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHANGA moved that after section 13 of the Bill the following section be added:—

"The landlord, within sixty days from the service upon him of a notice of sale under section 12 or 13, may notify to the authority issuing the notice his objection that the transfer was against custom or contract, and may institute a suit in the proper Civil Court for obtaining such a declaration.

"The Court passing such a declaration shall, if the plaintiff so ask, pass an order requiring the purchaser to restore possession to vendor on such terms as the Court may consider proper between the contracting parties, and, on the refusal of the vendor to take back possession, his landlord will have the power to enter into possession himself."

He said :—"The object of this motion is to protect existing custom. If it is the custom of tenure-holders to transfer their tenures without the consent of the landlord, this section would not touch that custom in any way."

The Hon'ble MR. REYNOLDS said :—"The first clause of the amendment seems unnecessary and superfluous, because no enactment of the legislature is necessary to enable the landlord to notify his objections and institute a suit in the Civil Court, and the wording of the second clause seems to me to be of a very unusual character. I think it objectionable that if the vendor refuses to take back the land, the landlord should be allowed to take possession of it himself."

The Hon'ble MR. GIBBON said :—"The amendment is in a shape that I do not approve, but I think it is a valid attempt to rectify an omission in the Bill. The Bill as it was submitted to the Select Committee provided a procedure under which the landlord could dispute the validity of a document submitted to him. But the Bill contains no provision for that whatever. It simply provides that when a transfer has taken place the transferor or transferee should pay, not only the registration fee, but the landlord's fee, and that a copy of the document is to be submitted to the landlord; but it provides no means by which the landlord can dispute the validity of the document. I maintain that under the Bill, if a document is submitted to the landlord, the instant he accepts the fee, whatever he may do afterwards, it will be taken for granted that he has consented to the terms and conditions of the transfer. The Bill gives him no remedy whatever. I object to the registration clauses in the Bill No. II being omitted from this Bill. This proposal is to provide a remedy, to allow the landlord the means of disputing not only the transfer of the holding, but also the terms stated in the document. We were told in Committee, if I understood the matter rightly in Committee, that it is the intention of the Government of Bengal to provide for that in another Bill. But that is not sufficient. What is wanted is to provide some means of allowing the landlord to contest a document of which he does not admit the validity. I do not say I approve of the amendment before the Council. It compels the landlord to take the initiative in every case. This I do not approve of. The Bill No. II allowed him to do so; there is nothing provided for cases in which the landlord refuses to take the fee. Suppose he returns the fee and does not admit the validity of the document; what is to be the result? The words of the amendment do not meet the case. I would like to see the matter considered again by the Government."

The Hon'ble Sir STEUART BAYLEY said :—"I think there is a misapprehension on the part both of the hon'ble mover of the amendment and of the Hon'ble Mr. Gibbon about the effect of this section. The registration which the Bill provides for is the registration of a document, not a registration of title. The registration of a document does not affect the validity in any way whatever of the transfer. If the transfer is valid in itself, well and good; if it is invalid, the registration does not make it valid, or alter its nature in any way; consequently, whatever remedy the landlord would have without this section he would have with it. Whether he acts upon the notice or not is a question quite unconnected with the effect of the registration of the document. He can sue now, and it is quite unnecessary to say that he may sue. Then look at the effect of the second clause of the amendment as it is proposed: it seeks to vest in the Court a discretion to restore the possession of the vendor, and provides that on his refusal the landlord may enter on possession. Can anything be more dangerous as to the effect that might be given to it in collusion between the landlord and the vendor? It will be so dangerous that I do not think the Government can assent to such legislation. But I admit that what the Hon'ble Mr. Gibbon said is true. The landlord should no doubt have some means of objecting to the validity of any transfer before the document effecting the transfer is entered in any register of titles. Provision for the registration of the owners of permanent tenures will be made in the Bengal Bill. It is a distinct understanding that this will be done, and a provision enabling the landlord to contest the terms of the deed has, I understand, been included in the draft Bill which has been introduced into the Council of the Lieutenant-Governor of Bengal. The Bill before the Council does not provide for the registration of titles, but only for the registration of documents."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 18 be omitted. He said :—"Hon'ble members will see that whatever new rights this section gives to a raiyat holding at a fixed rent or fixed rate of rent are centred in the word 'transfer' in clause (*a*) of the section, the protection given by clause (*b*) being identical with the protection given to all occupancy-raiyats by clause (*b*) of section 25. The question, therefore, is, should a raiyat holding at a fixed rent or fixed rate of rent be allowed the same rights with respect to the transfer of his holding as a permanent tenure-holder? I do not think that the economic considerations which have induced the Select Committee to strike out the provisions for a free sale of occupancy-holdings lose a whit of their force in the case of holdings protected from enhancement. The conditions and social positions of the raiyats are in both cases the same. In many instances the raiyat holding at a non-enhanceable rent is much worse off than his neighbours by reason of his having sub-let his holding, and they will be equally subject to the temptation of borrowing money at usurious rates of interest if their holdings be declared transferable. The very fixity of the rent would be an additional inducement to money-lenders and land-jobbers to get the holdings out of the hands of the raiyats, and the result will be a repetition of the consequences which followed the operation of similar provisions in the Dekkhan and the Sonthal Parganas. Again, regarding this section with section 50, I foresee an abundant crop of litigation which it would give rise to. If the right of free sale had been confined to holdings which are protected from enhancement by judicial decrees or by registered leases, there would have

been no uncertainty as to the holdings to which the right would extend; but in the face of the 20 years' rule of presumption all raiyats must claim a right of free sale, unless they wish to forego for ever their right to claim protection under that rule; and the question will not be finally determined except by a regular suit, involving appeals to the superior Courts. In the meantime the rights of the parties would remain uncertain, and the Collector's registers would be encumbered with entries which he would have, perhaps, ultimately to strike out. Ligitation is inevitable when a right is made dependent on an uncertain and contingent right; doubly so when such contingent right rests on a rebuttable presumption."

The Hon'ble MR. QUINTON said:—"With reference to the remarks which the hon'ble member has just made, I will merely bring to the recollection of the Council that in the permanently-settled districts in the North-Western Provinces the right to transfer their holdings has been specially conceded by law to the raiyats, and as far as I know, none of the evil results which have been anticipated to ensue from this section have taken place.

The Hon'ble MR. REYNOLDS said:—"The position of a raiyat holding at a fixed rent is surely different from that of a mere occupancy-raiyat. The Rent Commission were of opinion that the status of a raiyat holding at a fixed rent is more nearly assimilated to that of a tenure-holder, and they provided accordingly in their Bill. It has been said that the reasons why the occupancy-raiyat should not have a right of free transfer apply equally to raiyats holding at fixed rents; but there are some facts which would lead to an opposite conclusion. In discussing the question of the occupancy-raiyat having a right of free transfer much doubt was expressed—in the event of the right being conceded—as to how far he would be likely to make a bad use of the power. But with regard to raiyats holding at fixed rents we have instances of the existence and exercise of an undisputed right of transfer—I speak of the guzáshtadárs of Sháhábád—and the result has not been undesirable. It has not worked badly there either to their interests or the interests of cultivators generally. With regard to the other part of the objection, namely, the uncertainty as to the status of the raiyat, and the difficulty of saying whether a particular tenant is a raiyat at fixed rates or not, that point rather arises on the Hon'ble Mr. Gibbon's amendment than on the amendment before the Council, which proposes to omit the section altogether. Therefore I am certainly not in favour of the present motion."

The Hon'ble MR. HUNTER said:—"I also must oppose the amendment. The argument of the hon'ble mover of the amendment is directed against the right of transferability by tenants holding at a fixed rent. But it appeared to the Select Committee that there was ample evidence to show that the right of transferability now legalised for tenure-holders should also be recognised for occupancy-raiyats. Great difference of opinion existed, however, as to the conditions under which that right should be legalised, for certain classes of such raiyats. But the present section takes the class of raiyats which has the greatest fixity of tenure, and which has held (or has presumbly held) their lands since the permanent Settlement. The evidence clearly shows that this class of raiyats has by custom and as a matter of fact exercised the right of transferability. The custom is now firmly established in Bengal, and I think the Bill does wisely in recognising and giving legal validity to the custom. From what has fallen from the Hon'ble Mr. Quinton it would also appear that the custom is established in the North-Western Provinces, and that it has been legalised in that part of India without any evil consequences."

The Hon'ble MR. AMIR ALI said:—"The arguments put forward by the Hon'ble Bábú Peári Mohan Mukerji to withdraw the right of transferability from raiyats holding at fixed rates seem to establish the expediency of granting the right to all classes of occupancy-raiyats. I shall urge in detail the grounds on which I ask for the extension of the right to occupancy-raiyats in general when I move my own amendment. I would remark at this stage that practical experience furnishes a complete answer to the theories of my hon'ble friend. The argument that a raiyat who does not hold at a fixed rent or a fixed rate of rent will claim the right of transfer simply for the purpose of getting the rate fixed, is imaginary. The condition of the guzáshtadárs in Bihár amply shows that the raiyats' holdings at fixed rents for a long time have exercised the right without any difficulty and without any question, and are most prosperous as compared with other raiyats of Bengal and Bihár. Had there been any ground for the apprehensions entertained by the hon'ble mover of the amendment, surely there would have been some facts brought forward in support of general propositions. I submit there is no ground for supposing on purely *á priori* reasoning that the power of transferability given to these raiyats will be misused by them."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBUNGA by leave withdrew the amendment that in line 1 of section 18, the words "or rate of rent" and clause (*b*) be omitted.

The Hon'ble MR. GIBBON moved that in section 18, after the words "in perpetuity," the words "under a mukararrí lease or a judicially declared title" be added; and to clause (*b*) of the section the following words be added:—"or on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy." He said:—"I will say at once that the whole effect of the section turns on the effect of the twenty years' presumption under which a raiyat can claim a right to hold at a fixed rent. My object is that only those tenancies of which the title are admitted or decreed should come under the operation of the section. The section makes all tenants holding at fixed rents subject to the same rights as regards transfer. The practical effect of that is that, when a holding is transferred, notice of transfer would have to be served on the landlord in the same way as notice of transfer of a tenure under sections 12 to 17 of the Bill; and the practical effect will also be that they will come under the provisions of the Incumbrance chapter (XV) of the Bill, which

declares that all 'tenures' shall be sold subject to their incumbrances, and that the ordinary occupancy-holding should be sold subject to the voiding of such incumbrances. As long as a transferor or transferee can set up a presumption, it will lead to litigation and loss to the landlord. It will compel the landlord either directly or impliedly by accepting the fee to admit the right, or compel him to contest it at once. My object is to avoid that. By bringing holdings at fixed rates, where the title to hold at fixed rates is admitted or decreed, under the operation of the Incumbrance chapter no harm will be done. But where the title is disputed you allow the judgment-debtor, by setting up the presumption, to attempt to set aside a sale on the ground that his holding is a holding at fixed rates and not an ordinary occupancy-holding, that it should have been sold subject to its incumbrances and not with power to void them. Section 287 of the Civil Procedure Code lays down the rule that where a holding or any property is sold all material information should be submitted to the Court; and where a landlord sells up a holding without saying at once that it is a holding at a fixed rent he withholds information which to all intents and purposes it is material that the Court should know; where for instance a holding at a fixed rate of rent is sold as an ordinary holding, the judgment-debtor will have the right to have the sale set aside. Some words fell from the Hon'ble Mr. Reynolds with reference to tenures in Shahábád. I am opposed to the section under which the 20 years' presumption is allowed, but I have no hope of altering it after the declaration which has been made; therefore I must assume that that section holds good in the Bill. If the Council would refer to the Administration Report of the Bengal Government for 1883-84, it will be found that the Government admit that under the provisions of that section guzáshtadárí tenures are increasing, and that rights are being acquired under it; and I maintain those who are acquiring those rights never had any right to acquire such under any law, and if the provision is maintained in its entirety the consequences will be litigation and ruin to the zamíndár. With reference to the words I propose should be added to the section, I maintain no distinction should be made between occupancy-tenants; that the fact of an occupancy-tenant having acquired a right to hold at fixed rates should not give him a right to hold his land in a manner not permitted to the ordinary occupancy-raiyat; that the purpose for which he acquired the land should alone be taken into consideration; that no tenant, whether holding at a fixed rent or otherwise, has a right to use his land in such a manner as to render it unfit for the purpose of the tenancy. He should not be allowed to use it for building purposes or other purposes not contemplated when the land was made over to him. The section, as it stands, will allow him to destroy it with impunity."

The Hon'ble Mr. Reynolds said:—"I cannot help thinking that the hon'ble member has somewhat overlooked the wording of the section. The section refers to raiyats with fixed rates of rent in perpetuity, but he seemed to understand it to extend to every raiyat who might choose to set up a claim to hold at such rates. I cannot see that that is at all the meaning of the section. The amendment would confine the right of transfer to those who hold under mukarrarí leases or judicially declared titles. If this change were made it would have the effect of excluding those who, if their titles were tried, would be found entitled to hold at fixed rents under this section; and by excluding them it will place them in a worse position than they occupy now—in a position to which the Act should not reduce them. There is a very large number of raiyats who practically hold at fixed rates of rent, but whose title has never been tried, because they have not been taken into Court, and whose rights have not been questioned because they have been tacitly acknowledged. But the amendment really goes very far to bring these men down to the status of mere occupancy-raiyats. Therefore, so far from checking litigation, the amendment would more probably have the effect of promoting it. It is no doubt quite true that in cases of transfer of holdings when there is a doubt as to the character of the occupancy the right to hold at fixed rates will be claimed, and that the landlord will dispute the claim, and thus the question will be raised; but I think it would be better that such questions should be raised and decided. Then, with regard to the second part of the amendment. I should be sorry to see the words introduced, because I understand that the recognized status of a raiyat holding at fixed rates of rent is for all practical purposes that of a tenure-holder and not of a raiyat. You may trust him perfectly well not to use the land in such a manner as to render it unfit for the purposes of the tenancy. His interest is very much against his doing so. He may use it for a purpose incompatible with the purpose for which it was let to him, but I really do not see why we should interfere so long as the security for the rent is not endangered. If the hon'ble member had worded the amendment so as to show that it is the duty of a tenant at fixed rates of rent to use his land so as not to injure the landlord's security for his rent, although I should consider the amendment to be unnecessary, I should not have objected to it. But as the amendment stands the clause would have the effect of harassing and molesting the tenant, and I therefore trust the Council will not accept it."

The Hon'ble Sir Steuart Bayley said:—"I shall be very glad to leave the defence of this section in the excellent hands of my hon'ble friend Mr Reynolds, for when this proposal was first made I voted with the Hon'ble Mr. Gibbon in the minority. The question was very fully considered by the Committee, and the opinion of the majority was that which has been just explained by the Hon'ble Mr. Reynolds. They thought it would do more harm than good to divide tenants at fixed rates of rents into two classes—one which had documentary proof of its title, and the other the proof of whose title had not been submitted to the Courts. It was thought that whatever difficulties there might be in the way of ascertaining what the various rights were, though they may be brought to the front by the new law, yet they exist no less really at present under the old law, and a proposal such as this would have the effect of further weakening the rights of those who are least able to prove their rights. The Select Committee

having arrived at this conclusion last year, and having again adhered to it this year, I am not willing to ask the Council to swerve from it."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHANGA by leave withdrew the following amendments:—

That in section 20, sub-section (1), line 1, for the word "person" the words "resident cultivator" be substituted.

That to sub-section (4) of the same section, the words "when the landlord has recognized such joint tenancy" be added.

That for the word "co-sharer," wherever it occurs in the sub-section, the words "member of a joint undivided family" be substituted.

That sub-section (7) of the same section be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (7) of section 20 be omitted. He said:—"Contrary to all rules of evidence, it places the burden of proof on the wrong party. When the question is whether a raiyat has been in possession of land in a village for twelve years, he is the proper person to prove his allegation by the production of his rent-receipts. His landlord, if an auction-purchaser, would have no means of proving the negative and rebutting the presumption which the law will raise in favour of the raiyat. Even if he be not an auction-purchaser, his difficulty would frequently be great. His collection-papers alone would be wholly insufficient to rebut the presumption. They are at best only corroborative evidence. It is on the evidence of his gumáshta or collecting agent that he must rely in such case, but it is well known that in no class of servants are there greater changes by dismissal and otherwise than in the collecting agency of landholders. The landholders would, therefore, be virtually unable in most cases to rebut the presumption, although it be contrary to fact."

The Hon'ble MR. QUINTON said:—"The hon'ble member began his speech with the enunciation of the very general proposition that nothing would be easier than for the raiyat to prove possession for 12 years. It would be in the recollection of the Council that in the debate on the introduction of the Bill the Hon'ble Mr. Evans used some very striking arguments to show that it would be utterly impossible for the bulk of the raiyats to prove 12 years' possession. He quoted a letter from a zamíndár stating that the occupancy-right of the raiyat was a moral right, but it was only a moral right; therefore, I think the statement of the hon'ble mover of the amendment as to the extent to which the raiyats can prove their claims must be taken with great caution. On the one hand, we know that the bulk of the raiyats had a right of occupancy. Our lamented colleague, the late Hon'ble Kristodás Pál, distinctly admitted that 90 per cent. of the raiyats possessed the right of occupancy. On the other hand, the Council had heard from the Hon'ble Mr. Evans that most of these men were unable to prove the right they possessed. Unless it was shown that a man had not been in possession for 12 years, it should be presumed against the landlord that he had held for 12 years. It was very distinctly stated by the hon'ble member in charge in his introductory speech that this was quite in accordance with the facts. But the hon'ble mover of the amendment asserted that this section threw on the zamíndárs a burden which they were unable to discharge, inasmuch as it would require them to prove a negative. He assumed that every tenant in Bengal got rent-receipts, which he preserved. I doubt whether all raiyats do get receipts for the rents which they pay, and, if they did, they are not in the habit of preserving papers. He assumes that an ignorant raiyat, who pays a yearly rent of Rs. 5, is in a position to prove facts which his zamíndár, who has an office connected with his zamíndári, is unable to prove. That seems to me a very bold assumption to make Moreover, the zamíndár has not to prove that the raiyat has not been in possession for 12 years; he has only to prove that he came into possession within the last 12 years, which his records would easily enable him to do. As to the argument brought forward with respect to auction-purchasers, when we come to deal with the rights of millions of raiyats, I do not think the question of some hundreds or thousands of auction-purchasers not being able to ascertain who are, or who are not, occupancy-raiyats should be allowed to weigh against the rights of the whole body of raiyats. I must therefore vote against the amendment."

The Hon'ble MR. EVANS said:—I would refer to the remarks I made on the subject when the Bill was referred to the Select Committee. There is no doubt that the rule as 'onus' of proof should not be altered without some good reason, but there are very many cases in which the special rules had been introduced by Courts of Equity, such, for instance, as the case of young men of expectations dealing with money-lenders with regard to reversions. When Courts of Equity have found it impossible to do justice without reversing the rules of presumption, they have shifted the burden of proof; therefore, although it is undesirable to reverse the rule in ordinary cases, I cannot admit that to do so is necessarily wrong. Now, with regard to the general position of the raiyats, they are not in a position to meet the cost of litigation. They are very ignorant, and are not able to obtain competent legal advice; they have no means to prove their possession of a particular plot for 12 consecutive years beyond the oaths of a few of their neighbours; and mere oral evidence of that class is worth very little With regard to the zamíndárs, they have far better evidence available. They can give the direct oral testimony of their gumáshtas and zamíndári servants, and what their agents depose to could be corroborated by carefully preserved collection-papers in their sheristas. This includes measurement-papers, showing the plots and boundaries, the jamá-wasil-báki papers, showing the areas and the rents the raiyats paid, and so on; and there is no doubt that the possession of such records renders the proof comparatively easy. It was said that the raiyat on his part might produce rent-receipts; but, apart from the fact pointed out by the Hon'ble Mr. Quinton

that in many cases the raiyat does not get receipts, where he does get them, their value is next to nothing, because nothing whatever is stated in them except the name of the raiyat and the payments made, without any reference to the land which he holds; therefore he is not in a position to prove his statement that he held a particular piece of land for a particular period by rent-receipts. The point on which the presumption was to arise was very narrow. It was at first proposed that there should be a general presumption that the raiyat is an occupancy-raiyat, but it was pointed out that that would require the landlord to rebut a very large number of possible circumstances; that the raiyat would not have to disclose what it was in respect of which he made his claim; and that the landlord would have to disprove his claim in respect to every cottah of land in that village for the last 12 years. And, had the word 'estate' been put in and the presumption made applicable to the estate, the result would have been no doubt ridiculous, and the clause would have deserved the strictures which the learned Chief Justice had passed on it. The presumption had therefore been carefully limited to the particular piece of land in dispute. When he showed that he held that particular plot as a raiyat, it would be presumed as between him and the person to whom he paid rent for it that he held that land or some part of it for 12 years. Now, who was the person who could best prove whether the raiyat held a particular piece of land for 12 years? I say certainly the zamíndár with his records, if properly kept, could easily show that. The man who had records and the means of proof should be obliged to produce the proofs in such cases. As a matter of fact the bulk of the cultivators were permanent cultivators and cultivated the same lands year after year, and it was not a violent thing to say that they should be presumed to have held their land for 12 years until the contrary was shown. That being so, and admitting a certain amount of hardship with regard to the auction-purchaser, it was thought that some remedy of this kind was desirable to give real effect to the occupancy-right. Unless the auction-purchaser gets the village-papers from the old proprietor, which very generally he is unable to get, he is unable to find out what the raiyats' rents were, and he is obliged to apply to the Collector to have a measurement, to make a record of what the rents are. No doubt, there are not the same reasons for throwing the onus on the auction-purchaser to disprove the existence of occupancy-rights. But the auction-purchaser has always been beset by difficulties of proof, and unless a particular exception be inserted for his security, I do not see that he would have any other remedy than what he now possessed, and which this Bill gives him in a more workable form, namely, to apply to the Collector for a measurement and record-of-rights. And I admit that this presumption will operate somewhat hardly upon him; but he is a speculative purchaser, who buys with full knowledge of his position, and has many advantages in other ways and considers the advantages and disadvantages, and regulates his bids accordingly."

The Hon'ble Mr. Goodrich opposed the amendment.

The Hon'ble Rao Saheb Vishvanatha Narayan Mandlik said:—"I think the amendment is a proper one. The presumption created by the Bill is a new presumption, and Mr. Justice Field has in the minute before the Council said he could not conceive anything more dangerous than the presumption it is proposed to create. Mr. Dampier, formerly a Member of the Board of Revenue, has said that, on the whole, he would reject the presumption created by the Bill, and Mr. Field says that the effect of section 26 (2) taken with section 25 would be in a very short time to transfer the real ownership of the land from the zamíndár to the raiyat. With regard to auction-purchasers it was quite the other way."

The Hon'ble Mr. Reynolds said:—"I cannot support the amendment. After the speech which the Council has heard from the Hon'ble Mr. Evans, I was somewhat surprised to hear the last speaker say that the presumption is a wrong one to make. I venture to think that Mr. Field has not correctly apprehended the purport of the section. The presumption seems to me a perfectly reasonable one to make, because it is in accordance with the evidence, and cannot be said to shift the burden of proof to the wrong party. The raiyat has not the means of proof; he does not, as a rule, get receipts for rent, and when he gets them he does not keep them. This is a case in which the raiyat needs the protection which this clause gives him, and the interests of the small class of auction-purchasers cannot be considered against the interests of the very large body of raiyats. Where a record-of-rights has been established—and the Government of Bengal hope to establish it throughout Behar in the course of a few years—the presumption will not be necessary. The village-records will afford conclusive evidence on the point. But, till such a record is established, I think this presumption is suitable to the circumstances of the case."

The Hon'ble Mr. Hunter said:—"I also think the presumption is in accordance with the facts. A vast majority of raiyats at present enjoy the occupancy-right. It is admitted on the part of the zamíndárs that nine-tenths of the raiyats of Lower Bengal and Bihár possess that right; I think, therefore, that to give this presumption merely places the law in accord with the actual state of things in the provinces to which this Bill will apply."

The Hon'ble Mr. Amír Alí said:—"My hon'ble friend Mr. Evans has clearly pointed out the reasons for the retention of this presumption. But I entertain such a strong conviction regarding this question of principle, that I desire to say a few words to supplement the remarks which have fallen from the Hon'ble Mr. Evans. It seems to me that the argument which the hon'ble mover of the amendment has brought forward regarding the ability of the raiyat to establish his status can hardly be intended to be accepted seriously by this Council. Any one who has seen the receipts which are given to these raiyats will know exactly the situation in which these men are placed. Your Excellency has already heard what particulars are generally contained in these receipts, and the Council can easily imagine from these circumstances whether the raiyat is in a position to establish the fact which he is required to prove.

The landlord has the jamá-wásil-báki, the jamábandi and other village-papers in his hands to establish his allegations. It has been stated that the zamíndár's ámlá are frequently changed. It may be so in some cases; but it seems to me that very little force is to be attached to that portion of the argument. When one considers that not only are the zamíndárí records in possession of the landlord, not only are the papers of the gumáshta and other officials under his control, but that the raiyats are, from the helplessness of their position, absolutely unable to produce any satisfactory evidence, one feels that the presumption in question is based on considerations of justice and expediency. When one considers that the great bulk of raiyats are utterly ignorant of their own rights, illiterate, and unable to know the nature of the receipts which are given to them, it seems to me that to call on them to prove their position and rights is to ask them to do something which they cannot possibly do. This is only a presumption, and, if the evidence on the other side establishes a *primâ facie* case that the raiyat does not possess the status in dispute, the onus will of course then be cast on the raiyat to establish his case. It can hardly be said that this is a perversion of justice and of every right principle to give this fair and just presumption to the raiyat. I therefore oppose the amendment."

The Hon'ble Mr. Gibbon said:—"It has been admitted by hon'ble members of this Council that before we change the law we must prove the necessity for so doing, and we have the high authority of the Chief Justice for saying that in providing this presumption we are making a very great change in the present law, and I deny that its necessity has been proved. It has been stated that although we are changing the law we are making this provision in the Bill in accordance with facts. The Hon'ble Mr. Quinton has laid stress on the difficulties raiyats at present have under the present law in proving their occupancy-rights in their land; but he has omitted to make mention of the enormous changes we are making in the law under the Bill. Under the present law the raiyat has to prove his right of occupancy in every piece of land he holds; if he has been shifted from field to field he must fail to prove his right; whereas under the Bill it is declared that if he has held any land for 12 years in a village he will have occupancy-rights in all the lands he may hold in the village. I deny that the necessity to change the law has been proved. It has been stated that the onus of proof should be cast on the person best able to prove the facts, and that the landlord is in a better position to rebut the presumption from his papers than the raiyat; but the jamábandi papers of the landlord show everything but the one thing required. They show the area of the holding and the rent annually payable, but they do not show, nor will they show in the future, how and when the raiyat acquired the land. It has been stated that the raiyats do not receive proper receipts to prove their rights, but on this point also we are changing the law. We are compelling the landlord to keep counterfoil books and are providing penalties for not granting proper receipts, and these receipts will in the future be sufficient evidence of the raiyat's rights. I deny that the case has been proved."

His Honour the Lieutenant-Governor said:—"I do not wish to prolong the discussion. It may be that the presumption is favorable to the great body of the raiyats in the country. But that there is nothing improper, irregular or anomalous in the presumption made in the Bill has been clearly shown by the arguments adduced by the Hon'ble Mr. Evans. With regard to the auction-purchaser there has always been a difficulty, but it seems to me that where a very large proportion of the raiyats are admitted to be raiyats with the right of occupancy, and where the number of auction-sales is infinitesimally small, there is no sufficient ground for a change in the rule. Further, it is beyond question that if the raiyat requires protection from any one it is from the auction-purchaser who comes in to try to make as much as he can out of the estate. On every ground I think the Council is right in maintaining this section."

The Hon'ble Sir Steuart Bayley said:—"After the exhaustive discussion which this subject has received, I do not wish to take up the time of the Council by any lengthy remarks. But I feel very strongly that a real necessity exists for this presumption, and I cannot pass by in silence the statement made by the Hon'ble Mr. Gibbon that the receipts which the raiyats receive are sufficient to enable him to prove the occupancy-right. They do not give the boundaries of the holding, and the objection which I have all along understood the hon'ble mover of the amendment has to the provision that the receipt should give the boundaries is evidence of the fact that at present receipts do not give boundaries: all that is stated in the receipt is the amount of money received and the time for which it has been received. I have always understood him to assert that this is sufficient. But he now says that the rent-receipts prove the raiyat's position; if so, then the receipts should give the boundaries. As an additional argument against throwing on landlords the burden of proof whether the raiyat has or has not held for 12 years, we are told of the extraordinary rapidity with which the zamíndár's servants disappear; he says they seldom remain in service more than a few years; sometimes the servant dies, sometimes he is dismissed, sometimes he disappears. Now I do not understand that they are exposed to any unusual mortality, and if they are frequently dismissed it points to what is really at the bottom of most of the rent difficulties in the country, namely, that the zamíndárs entrust a most difficult and delicate duty to a class of men who are unfit, underpaid and dishonest. A reform in this respect would do the zamíndárs more good than any amount of legislation. I quite understand what the Hon'ble Mr. Gibbon says with regard to the inability of the zamíndár to prove when a raiyat comes in; still if a man has come within the last 12 years, there can be no difficulty in showing it. That will rebut the presumption, and there will be an end to it. But the hon'ble member says that the Bill before the Council provides for the grant of real and efficient receipts, and that this will do away with the neces-

sity of the presumption. We are certainly trying to do so, but it is one thing to provide for this in a Bill; it is quite another to have it universally put in practice."

The Hon'ble Mr. Ilbert thought that, for the reasons stated by the Hon'ble Mr. Evans, who spoke with intimate practical knowledge of the subject, the presumption ought to be given in the limited form proposed by the Bill. It had been already pointed out that the criticisms of the learned Chief Justice were based on a misapprehension of the scope and intention of the provision under criticism, and the weight of the arguments directed against it by the Hon'ble Mr. Justice Field was materially lessened by the omission of the word "estate."

The amendment was put and negatived.

The Hon'ble Mr. Reynolds then moved that in sections 20 and 21, after the word "village," wherever it occurs, the word "estate" be added; also that after section 21 the following proviso be added :—

"Provided that, where an estate extends over more than one pargana, the estate shall be deemed to include only so much of the estate as is comprised in the pargana in which the land held by the raiyat is situated."

He said :—"This amendment is intended to restore, with some modification, a provision of the Bill which received the approval of the Secretary of State, which formed part of the Bill as introduced into this Council, and which, after full discussion by the Select Committee, was deliberately retained in the Bill as re-published last year. Throughout all these stages of the measure the principle was accepted that the occupancy-rights of the settled raiyat should extend over all lands held by him in the village or estate. So important did the Secretary of State consider this principle that he was careful to point out to the Government of India that its legislation must provide that the estate should remain unimpaired, and that the right should not be defeated by any sub-division of the estate. In other words, he intended the estate to be the entire estate as fixed at the Permanent Settlement, and nothing less. At the eleventh hour, and in my opinion most unfortunately, the Select Committee struck out the words relating to the estate and limited the right to the village alone.

"The grounds on which the majority of the Select Committee made this change were explained by the hon'ble member in charge of the Bill in the speech which he made at the beginning of this debate. The reasons may, I think, be fairly summarised under the following heads,—*first*, that the retention of 'the estate' is unfair to the landlord; *secondly*, that the prescriptive rights of khudkhást raiyats never extended further than the village; and *thirdly*, that the change will not practically work any substantial injury to the raiyat.

"As to the first point, I must own I have little sympathy with the feeling which would restrict the growth of the occupancy-right in the interest of the landlord. The occupancy-right is nothing more than a right to pay regularly a fair and equitable rent; and I have not the least doubt that, in the long run, a proprietor would be the gainer by having every one of his tenants an occupancy-raiyat. But I am well aware that the landlords do not share this view, and I admit that it is reasonable that the landlord should have an opportunity of knowing something of his tenant, and that, if the privileges of a settled-raiyat extended to the whole estate, cases might occasionally occur in which a proprietor might admit a tenant to occupation under the belief that he possessed no right of occupancy, and the tenant might then turn round upon him and claim a right of occupancy on the ground of his having previously held land in another village or tenure of the same estate, though under a different landlord. Such cases, I say, might occasionally happen; but the chance of their happening has been greatly exaggerated. They might happen on a few exceptionally large estates, such as the estates of the Mahárájá of Burdwan or the Mahárájá of Bettiah. But the hon'ble member in charge of the Bill spoke of raiyats acquiring occupancy-rights in villages of the same estate twenty miles apart, as if such cases were or could be at all common. But what are the real facts? Out of all the estates in these Provinces, 89 per cent. are petty estates of less than 500 acres, which is very little more than the average size of a village. In 89 cases out of 100, it is much the same thing to the landlord whether the estate or the village is declared to be the limit though it is a very different thing, as I shall presently show, to the tenant. I therefore hold that, if no middle course could be found, and it was necessary to choose between the village and the estate, the Select Committee ought to have adhered to the original Bill. In the vast majority of cases this would involve no possible hardship to the landlord; in the few remaining cases the hardship would be of the most infinitesimal kind—the hardship of the proprietor finding that he had got an occupancy-raiyat instead of a non-occupancy-raiyat for his tenant—a very good thing, in my opinion, for both the parties concerned.

"Secondly, it is urged that the village, and not the estate, was the limit of the old right of occupancy; and this is no doubt perfectly true. The khúdkhást raiyat was the cultivator of the lands of the village in which he lived. But to make this argument valid we ought to be able to restore the village as it existed at the time of the Permanent Settlement. But this we cannot do, and the Bill proposed to take the survey village, that is to say, the village as it existed 45 or 50 years after the settlement. But this is a totally different thing; and we have evidence to show that the survey village must comprise a much smaller area than the village over which the old occupancy-right extended. The increase in the numbers of the people, and the extension of cultivation, have led to a marvellous growth in the number of villages. The present number of villages in Bengal and Bihár is by the latest returns 194,701; the number ten years ago, in 1874-75, was 142,339—an increase of more than 5,000 villages per annum. Unfortunately, we have not, so far as I know, any complete figures of the number of villages at the time of the Permanent Settlement. But, for a number of districts, we have the quinquennial papers filed by the zamíndárs under Regulation XLVIII of 1793 and Regulation VIII

of 1800; and, in a few cases, it so happened that these papers give the number of villages in some parganas of six districts of Bengal and Bihár. I have referred to these papers and have compared the number of villages with the number ascertained at the survey, nearly 50 years later. The general result is that, except in a few cases, in which the quinquennial papers show kismuts or hamlets as separate villages, the survey villages show a large increase of number. Thus, in pargana Mehar, in Patna, the quinquennial papers give 264 villages; the survey found 331. In pargana Moonair, in the same district, the quinquennial register shows 53; the survey shows 321. In pargana Sasseram, in Sháhábád, the quinquennial number of villages is 896; the survey number is 1,328. In parganá Jellamootta, in Midnapur, the respective numbers are 141 and 174. I do not wish to attach undue value to these quinquennial registers. They are merely papers filed by the zamíndárs, and they possess no definite authority. But on this point they furnish the best information I have been able to obtain as to the state of things 80 years ago; and this information leads us to what was *à priori* a probable conclusion, that the number of villages at the time of the survey was considerably greater than the number at the time of the settlement, and that, consequently, to give the settled raiyat occupancy-rights over the survey village is by no means to replace him in his old position in which his rights extended over the village as it existed in former times.

"Thirdly, it is contended that the rule laid down in the Bill can work no practical injury to the raiyat. If I were once satisfied on this point, I should not care to trouble the Council further on the question. But it is just because it seems to me that there is a real danger in this matter to the raiyat, that I am anxious to press the acceptance of this amendment on the Council. The landlords are impressed, I can hardly say why, with what I can only describe as a morbid horror of any extension of the right of occupancy; there is no device to which they will not have recourse to prevent its accrual, or to destroy it where it exists. It is the duty of the Council to see that the principle which the Bill lays down is not expressed in such language as to allow of its being defeated or evaded by acts which contravene its spirit. The hon'ble member in charge of the Bill admitted that this might occur in exceptional instances in which a landlord had several villages in his own direct management within reach of the cultivator's residence, but he contended that the number of landlords in that position is very small, and that very few tenants could be affected by it.

"But this inadequately represents the extent of the danger. It is not at all necessary that the landlord should have several villages under his own direct management. It is true that the area of the average village does not greatly differ from the area of the average estate, but it does not follow that the boundaries of the estate and of the village will coincide. The cases are extremely numerous in which an estate or a tenure lies partly in one village and partly in another. In all these cases, tenants whose holdings lie anywhere near the village boundary will be harassed and molested with the object of driving them across the line and thus breaking down their occupancy-rights, and non-occupancy-tenants will in the same way be shifted about in order to prevent the accrual of the right.

"This is a real and very serious danger, and the case which it represents is by no means exceptional. The landlords who could exercise such oppression might be reckoned by the thousand, and their tenants by the ten thousand. I therefore think that the Government of Bengal would have been justified in asking the Council to restore the wording of the original Bill. But I have already admitted that there are some large estates in which it would be unreasonable to require that the right of occupancy should extend over the whole estate. The Government of Bengal has therefore considered whether any middle course can be found, and any plan devised which would obviate the danger to which I have referred, without leaving the landlords any reasonable ground of complaint. Such a middle course will, I believe, be found by restoring the old definition, but at the same time limiting it by declaring that where the estate consists of more than one pargana the occupancy-right of the tenant shall not extend beyond that pargana in which his holding is situated. This accordingly is the amendment which I now ask the Council to accept. The pargana or fiscal circle is a definite and well-known area. For the purposes of this section it seems better than the tháná or the sub-division, as its boundaries are fixed and unalterable, and there is no doubt or difficulty in determining to what pargana a given piece of land belongs. The average pargana is no doubt larger than the average estate, but it is not the average estate which we have to consider in dealing with this question. In an average estate—an estate below 500 acres—there would be no hardship to the landlord in saying that the occupancy-right shall extend throughout the estate, as in such an estate the landlord might fairly be presumed to be able to know all his tenants. What we have to consider is the exceptionally large estate, and such estates extend over many parganas, and in some cases over more than one district. For such cases it seems to me that the pargana limit will fairly and sufficiently provide.

"I need not remind the Council of the historical association of the pargana with questions of tenancy and rent. The existence of the pargana as a fiscal unit was recognized in the old law which made the established rates of the pargana the rates at which pattás were to be granted to the raiyats. The parganá has as real an existence and as definite an area now as it had then. The records of the Survey Department and of the Boundary Commissioner's Office will supply the Courts with a secure guide in the application of the rule if the Council should think fit to adopt it. I think, therefore, that I may, with some confidence, ask the Council to agree to this amendment. It has been my object to show that the limitation of the occupancy-right to the village will not replace the raiyat in his old position, and will not ensure him that reasonable fixity of tenure which is intended to be given him by the Bill; whereas the extension of the rights to the estate limited by the boundary of the pargana will save the raiyat from

being (in the old words of the Court of Directors) 'improperly disturbed in his possession,' and at the same time will not involve consequences unfair to the landlords."

The Hon'ble MR. EVANS said:—"I do not intend to take up much time, having already made some remarks on this question when speaking on the motion for the consideration of the Select Committee's report, but there were certain points in the remarks made by the hon'ble mover of the amendment with regard to which I should like to say a few words. The first point is the arbitrary selection of the revenue unit called an 'estate' as the area within which the raiyat is to have right of occupancy.

"It is admitted that estates are sub-divided, to a very large extent, into permanent under-tenures, and that there is no kind of connection between the raiyats of one village in one under-tenure in the estate and the raiyats in another village in the same estate situated in another under-tenure, nor between their respective landlords, the under-tenure-holders. I could have understood his argument had he proposed to give a raiyat the occupancy-right in a whole pargana. But when we come to see that the pargana has nothing to do with the particular revenue unit which pays revenue to Government, and that one tenure-holder has nothing to do with another tenure-holder, it is difficult to find any principle in it. Then the hon'ble member has pointed out that estates very often are not bigger than the village area; but he also points out that though, as a rule, the size of an average estate is that of an average village, yet there is no sort of connection between an estate and a village. But he seemed to justify the extension of the occupancy-right to a larger area because there are more villages now than there were at the time of the Permanent Settlement, and that the village of that time was much larger than the village of the present day. The fact that at the time of the Permanent Settlement one-third or two-thirds of the land was waste explains to a great extent the larger number of villages. But if he means it to be understood that the whole area of Bengal was covered with occupancy-rights, I say it was not so; because the large waste lands, large forests and great jungles which existed without any cultivation were not subject to any occupancy-right until reclaimed. Some of the village areas included waste lands, but there were other very large tracts of waste lands which were not included in any village area. Then, with regard to the necessity for the amendment, my hon'ble friend starts by saying that landlords have a morbid horror of the occupancy-right. But I may fairly observe that there are some persons who have a morbid horror of landlords and desire to erect unnecessary fences against imaginary dangers. I think that it is not practicable on any large scale to move raiyats from one village to another; that there are often feuds between neighbouring villages; and even where they are on friendly terms, the raiyat would still be a stranger in the village to which he is shifted. Where he is a permanent cultivator shifted from one plot to another in the same village it is different. I do not think, considering what we have done for the occupancy-raiyat, there is now real danger of his being deprived of his right to any large extent. The hon'ble member has, however, urged that the introduction of the word 'estate' had the approval of the Secretary of State. I regard with great deference any opinion expressed by so high an authority; but it is far from clear that the Secretary of State even had this scheme under his consideration or used the word 'estate' in this sense. I am strongly of opinion that with the introduction of the word 'estate' the Bill will be going to an entirely unnecessary length and adopting an unsound and novel principle. The khúdkhást raiyat's right only extended to the village of which he was a resident. I grant that the area of the village in the time of the Permanent Settlement might have been of larger extent than villages of the survey. But that change and the disintregation of village communities has been met by making permanence of cultivation instead of residence the qualification for the acquisition of right of occupancy. If my hon'ble friend insists that the right of the khúdkhást raiyat extended over a large area, then let him confine the occupancy-right to the resident raiyat. Having recognized the difference between the position of the khudkhást raiyat of the time of the Permanent Settlement and the position of the occupancy-raiyat of the present day owing to changed circumstances, the Select Committee have, by giving the raiyat the occupancy-right wherever he has permanent cultivation, done a great deal; and I think that there is no necessity for going further."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I strongly oppose the proposal to introduce the word 'estate' in sections 20 and 21 of the Bill, and I think the proviso which the hon'ble mover wishes the Council to insert in section 21 will not at all remove the strong objections which I entertain to this amendment. As has been just remarked by the Hon'ble Mr. Evans, it is often the case that some villages of an estate are let out in patní and other tenures, and therefore, if a right of occupancy, which is acquired in a village, is extended to the estate in which the village is situated, it will create very great difficulties; and it will, as has been observed by the hon'ble member in charge of the Bill, make the objections to the presumption in section 20 much more valid. On these grounds, coupled with the reasons adduced by the preceding speaker in exposing the fallacies which underlie the arguments which have been adduced in support of the motion, I think the amendment should be rejected."

The Hon'ble MR. HUNTER said:—"I support the amendment. The question as to the insertion of the word 'estate' in sections 20 and 21 was very carefully discussed in Committee and I was one of the members who desired to see the word 'estate' either qualified or omitted, because I believed the insertion of the word, without some qualification, might be productive of hardship to the zamíndár. It is quite true, as the hon'ble mover of the amendment has said, that the number of large estates is small, but the total area represented by this small number of large estates is very great. The insertion of the word 'estate' without any qualification would enable an occupancy-raiyat to traffic on the ignorance of the proprietor of an

extensive estate situated perhaps in several districts by entering on land as a stranger and then asserting the occupancy-right. But I voted for the omission on the understanding that, if any reasonable proposal were brought forward to limit the meaning of the word 'estate', I would give it my support. The amendment now made does not entirely commend itself to me, and I shall presently state what I think a fair proposal. I shall bring forward that proposal as an amendment, should the amendment now before the Council not be carried. In the meanwhile, I shall vote for the amendment as it stands The Select Committee held that it would be a hardship on the zamíndár that a raiyat from a distant part should settle down on the land of a large estate, and afterwards assert a right of occupancy—a right of which the zamíndár was ignorant when he admitted the raiyat as his tenant. There are two ways of dealing with the question—either to increase the area of the village or to diminish the area of the estate. Neither of those proposals found acceptance with the Committee. My own idea is that the best form of limitation will be to strike out the word 'estate' and to insert words which will cover the land or tenure of the actual landlord. The word 'estate' means a unit of entry in the Collector's register; what we wish to get at is the tenure or holding of the landlord immediately superior of a raiyat. When under-tenures are created in an estate, it renders it almost impossible for a large zamíndár to know what is going on in different parts of his estate, as the different under-tenures may have no connection with one another. But the landlord, or actual superior of the tenant, has in an immense majority of cases the means of knowing the class of tenant who asks for a holding. I am bound to confess that the introduction of the word 'estate', without qualification, might operate to the injury of the zamíndár. I was very much struck by the historical retrospect given by the hon'ble mover of the amendment in bringing forward this motion, and the evidence which I have myself collected bears him out in what he said about the sub-division of villages. A village has been sub-divided not merely by the reclamation of new land, but also by various contingencies. The chief reason, however, why a residentiary village should no longer be taken as the unit for the exercise of the occupancy-right is not the sub-division of villages, but the sub-division of estates. Sub-division has been going on for a very long time, and, as a matter of fact, I believe there is a risk that in some cases the tenant who tries to enforce his occupancy-rights in a village will find it divided between several landlords.

"I agree with the Hon'ble Mr. Reynolds that there will be a danger of the raiyat being shifted beyond the boundaries of the village into another part of the estate not within the village. It seems to me, however, that there is also another danger. The raiyat has not merely the ordinary risk of being shifted from one village to another; he has also to contend with the distinct animus on the part of a zamíndár, whose interest it will be to prevent him from obtaining the right of occupancy, and who will try to shift him from one village to another. I do not share in the opinions of those who think that zamíndárs, as a rule, have behaved badly to their raiyats. I admit that the difficulty mentioned by the Hon'ble Mr. Evans is a true one. Not only are estates large, but they are also sub-divided, and there is the difficulty that the tenure-holder may not know the rights pertaining to the man who settles on his land. But I think it has been shown by the Hon'ble Mr. Reynolds that this danger is small as far as the landholder is concerned, while the risk is very great as far as the tenant is concerned. For these reasons I support the amendment. But if the amendment is not carried, I shall ask leave to move an amendment with the view of substituting the permanent tenure of the landlord for the word 'estate'. I am not aware whether it is in accordance with the rules of the Council to move an amendment upon the amendment. I shall ask Your Lordship to decide whether I shall be in order in doing so."

The Hon'ble Mr. Gibbon said:—"I will not go very deeply into this matter. The Hon'ble Mr. Evans and other hon'ble members who have preceded me have already said all I had to say, or could say, on the subject. I will only say that I was among the number who would have been glad to see the area within which the occupancy-right would be allowed to accrue extended. But I admit all the difficulties in the way of allowing this which were found by the Select Committee. With reference to the specific amendment before the Council, that the limit of the estate should be the pargana, I can only say that I manage one estate within one pargana which consists of 1,100,000 acres. The proposal of the Hon'ble Mr. Hunter creates great difficulty in my mind. There are two classes of tenure-holders—one permanent, one temporary. The tenure-holder who has only a temporary interest in his tenure may be constantly shifted, and therefore the area within which the raiyat may one day acquire the occupancy-right may not be the same area the next day"

His Honour the Lieutenant-Governor said:—"I am bound to say a few words with regard to this question, which underwent long and serious discussion in the Select Committee; but the revival of the question in Council has been at any instance, because I could not help feeling that the principle which is involved is of very great importance and should be brought before the Council for consideration. The Hon'ble Evans the other day said that in regard to this matter the word 'estate' had been introduced at the instance of the Bengal Government. I wish to plead not guilty to that charge because, if I remember rightly, the proposal formed part of the suggestions in the despatch of the Government of India to the Secretary of State three years ago, and eventually received his approval. Now, of course, I understand that the Secretary of State, in giving his sanction to the inclusion of the word 'estate' in connection with this section, might have been misled, as probably many other mistakes have been made in considering analogies between estates and holdings in England and in this country, in the thought that an estate in India meant very much the same thing as an estate in England. The objection which has been taken is that an estate in India comprises very many large sub-

ordinrte tenure-holders, who are practically as much landlords as the superior landholder himself. The position has been rightly explained both by the Hon'ble Mr. Evans and the Hon'ble Peári Mohan Mukerji, who have shown that where there are patnís and dar-patnís and se-patnís, carved out of the parent estate of the landholder or proprietor, as entered in the Government registers, there may be risks in giving too wide a definition which we should not incur. I fully recognise the force of that argument; but then there is a danger in the opposite extreme. The danger of limiting the position of the occupancy-raiyat to a single village lies in this, namely, the risk of the loss of his status as an occupancy-raiyat from the prevalence of the practice of the zamíndár shifting him from one holding to another. It was the common prevalence of this practice which among other causes has led to a revision of the law. And, though the Hon'ble the Maháráájá of Durbhanga insisted the other day there that was no proof of such a practice, I think he must have spoken in forgetfulness of the statement which he himself made to the Hon'ble Mr. Reynolds—when he went on deputation under instructions from my predecessor, when there was proposal to recognize occupation for three years, and not twelve years, as conferring the occupancy-right—that if that was the case, raiyats would have to be shifted from year to year to prevent their acquiring the occupancy-right. That was a clear illustration of how a large zamíndár intended to act to prevent the accrual of the occupancy-right. Now if the right of occupancy is confined to the village in which the raiyat resides, it will still be in the power of the zamíndár to turn the raiyat away from one village to another, and thereby make him lose the status, which it is one of the objects of the Bill to secure. The object and general policy of the Government of India within the last few years, as I have understood the discussions upon the subject, has been that it should be the aim of the Government to try and extend, as far as possible, the status of the right of occupancy, with a view not only to the great advantage of the zamíndár in securing a raiyat with substantial interest in the land, but also generally for the interests of the country. Now, in the Select Committee, the original proposal for the introduction of the word 'estate' was after considerable discussion, rejected. There is no wish to revive that proposal; but it demands attention, whether some modification could not be made which would still afford greater protection to the raiyat against the danger to which I have alluded; and I understand the Hon'ble Mr. Reynolds' proposal to-day to be that instead of limiting the right simply to the village, it should be extended to the parganá which is a larger area than a village. If it will facilitate the carrying out of the object of the Bill in giving better security to the raiyat in his holding, by extending the occupancy status to the parganá, where there would still be the same rent-receiver, I think it would be an improvement upon the section as it stands; and for my part I should be quite willing to adopt that modification. The risk of shifting the raiyat from village to village will not then be a serious one."

The Hon'ble Sir Steuart Bayley said:—"I am sorry I am not able to accept the amendment which has been urged upon us on the authority of the Bengal Government. I dwelt at such length in my speech on Friday last on the subject of omitting or retaining the word 'estate' in the definition of 'settled raiyat' that I don't like to go over the same ground again. Briefly, I may say that our objection to the word 'estate' as dealing with rent is that an estate might be divided amongst numerous tenure-holders of one kind or another who know nothing of one another's raiyats, and have no access to each other's papers. Therefore, in any of such cases a man might come in as a non-occupancy-raiyat and then claim occupancy-rights. I then went on to show that while there were serious objections to the retention of the word 'estate,' the advantage to be derived from its retention would of necessity be very small. Nine-tenths of the raiyats will have occupancy-rights under the Bill; therefore there remains only the one-tenth of non-occupancy-raiyats. Out of this one-tenth there would be exposed to danger from shifting only those who were on the estate of a landlord holding two or more contiguous villages in his direct possession, from one to the other of which the landlord might have the power to shift these men. The number of landlords who have this power is small; the number of raiyats on whom it could be exercised is extremely small. On the other hand, what is the real value of it to raiyats taking up fresh land? It is admitted that 99 per cent. of the raiyats cannot leave their village, and therefore only the few raiyats to whom the present proposal would be an advantage would be those who would be willing to abandon their homes But this is precisely the class who should not, we think, have the boon. Looking at the disadvantage to the raiyat and the danger to the zamíndár as in either case of very small importance, I prefer to take my stand on the ancient, historical, customary and legal rights of the khúdkhást raiyat and go no further. Now the khúdkhást raiyat undoubtedly had both by custom and right the right of occupancy in any land held by him in his own village. I am first met by the argument that this proposal had been sanctioned by the Secretary of State. His Honour the Lieutenant-Governor, I think, has made an error in saying that the words 'or estate' were suggested in the despatch of the Government of India; the suggestion was not made there, but was contained in the Secretary of State's reply. How far the Secretary of State had foreseen the difficulties arising out of the sub-division of estates into numerous separate tenures I cannot say; but when we came to examine the subject we found that a single revenue-estate might be sub-divided into a dozen or more of rent-estates. Therefore, while we have narrowed the area below the limits in the Secretary of State's despatch, we have very greatly strengthened and facilitated the proof of the right within that area. Then we were told that the word 'estate' was contained in the first and second drafts of the Bill, and that only now, at the last moment, we have made a change. I must ask the attention of the Council to the real history of the case. It is true that we did not leave out the word in the second draft of the Bill, but we specially called attention to the real

inconveniences which would ensue from its retention, and it was on the strength of that call that the Local Government again referred the matter to its officers; and when we found that a large number of those officers objected, we again considered the matter. The change therefore was not made in the ill-considered way which might be imagined from the speech of the hon'ble mover of the amendment, but it was done on the advice of a great number of the officers of the Bengal Government. The hon'ble gentleman has laid a good deal of stress on the argument that a landlord ought to like to have occupancy-raiyats on his estate; he admits that the landlord does not like them, but he says that that is due to the ignorance of the landlord to his own interests. But we cannot make a landlord like what he ought to like. He has an idea that by extending occupancy-rights beyond what the old law and custom of the country grants, it trenches on his rights as the landlord. Whether the morbid horror which the landlord has is well or ill founded, there it is, and we ought to take some cognizance of it where it does not interfere either with the stability of the raiyat or the progress of the country. Then an argument is built on my assertion that the rights of the khudkhást are limited to the village in which he resides. If this be true, it is urged that we should give him his right in that village—the village of the old khúdkhást raiyat of the time of the Permanent Settlement. But the village of the Permanent Settlement is gone, because there is now so much more cultivation. By going to the village of the survey we are going back 30 years. The line must be drawn somewhere, and here we have an area which is definitely and finally recorded, and which is independent of any subsequent changes. I do not think we can be asked with any reason to go any further back. I admit that the village of the present day is probably smaller than the village of the time of the Permanent Settlement, but we have much more cultivated land. The village of the present day, as far as I can make out from a statement which has been furnished to me, averages about 400 acres. I cannot say what the occupancy-raiyat's right averaged at that time; but statistics show that in Dacca the vast majority have holdings of only five bíghás, and in Tipperah three-fourths of them hold on an average not more than three bíghás, and in portions of Bihár three-fourths hold below five bíghás. The standard bíghá is one-third of an acre; therefore the average area of a village is 1,200 standard bíghás; and comparing the agricultural holdings of an occupancy-raiyat with the area over which he can acquire the occupancy-right, I do not think that is such a small area, and there is no real necessity to extend it. We are asked to extend the right over so much land as is within the parganá. But what is the area of a parganá? The particular estate which the Hon'ble Mr. Reynolds mentioned as one in regard to which the difficulty had arisen, and the one to which he would apply his remedy, was the estate of the Mahárájá of Bettiah. The Hon'ble Mr. Gibbon had told the Council that you will find a single parganá, the very parganá in which the Mahárájá has the greater portion of his estate, containing a million of acres. What possible advantage, therefore, can it be in such a case as this to withdraw the word 'estate' and put in the word 'parganá'? It will leave the question exactly as it is. That of course is an exceptional case, but it is precisely one of the cases to which the Hon'ble Mr. Reynolds thinks it might be applied. As soon therefore as we begin to test the matter we find that it does not meet the case. There are other ways proposed to meet the difficulty. One is that it should be confined to permanent tenures. That was proposed in Committee. The Mahárájá of Bettiah's estate is let out on long leases which fall in from time to time; consequently the raiyat holding under the intermediate tenure-holder, as the Hon'ble Mr. Hunter proposes to amend the section, is a raiyat who has one day an occupancy-right in the whole of the parganá and another day is a raiyat in a small tenure. As the small tenure falls in, it is held directly by the zamíndár or amalgamated with another tenure, consequently the area of a tenure is constantly shifting, and how we can regulate raiyat's right of occupancy with an area which we cannot calculate I am unable to understand. I am afraid therefore, that the scheme, however well intended, will break down on the point. There is one other point which is worth noticing, and that is with regard to the presumption. The presumption is a fair one so long as it gives the raiyat the chance of proving his occupancy-rights in the village. It is infinitely more difficult to defend if those rights are extended to the estate. The presumption itself is an infinitely more valuable boon than the extension, and I shall consequently ask the Council to reject the amendment."

The Hon'ble Mr. Reynolds' amendment was then put and negatived.

The Hon'ble Mr. Hunter by leave moved to substitute in the amendment just put to the Council the words "a permanent tenure of the landlord" for the word "estate."

The amendment was put and negatived.

The Hon'ble Bábú Peári Mohan Mukerji moved that section 21, sub-section (*1*) of the Bill be omitted. He said:—"A provision which gives the settled raiyat a right of occupancy in all land let to him will make the landholders very reluctant to let new lands to such raiyats. Such a provision would, therefore, act injuriously on the raiyats themselves. The hon'ble member in charge of the Bill expressed his wonder that the landholders should prefer to have for their tenants a body of serfs instead of a body of prosperous raiyats with substantial rights of occupancy, and my hon'ble friend Mr. Amír Alí has given to the Council, as instances of unworthy conduct, extracts from statements made by landholders themselves, showing that in certain parts of Bihár landholders give short term leases and shift raiyats from one plot of land to another with a view to bar the accrual of rights of occupancy. I wish to take this opportunity of submitting to Your Lordship and this Hon'ble Council that there is not a single statement in the massive records connected with this Bill that the practice in question obtains anywhere in Bengal, and, if it obtains in certain parts of Bihár, it has the justification that

the interests of agriculture in that Province make it necessary to let land remain fallow after it has been cultivated for a number of years. But little blame to landholders if they have taken care to prevent the extension of rights of occupancy in land. Neither the Regulations of 1793, nor any custom which found a place in the judicial records since that year, gave a right of occupancy to any but a khúdkhást-kudimi raiyat, that is, an old and resident raiyat. With all deference to the opinion of more than one hon'ble member to the contrary, I maintain, and I am prepared to substantiate the view, that Act X of 1859 for the first time gave rights of occupancy to non-resident and such of the resident raiyats as had not acquired it by length of possession; but, while creating this new right, it expressly provided for the protection of rights of landholders with regard to lands in which the right had not already accrued; and section 7 of that Act runs thus :—

'Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat, when it contains any express stipulation contrary thereto.'

"Few zamíndárs would have cared to concern themselves with the growth of this right if that Act had not at the same time attached to it other substantive rights. The zamíndárs found that the law raised a presumption of fixity of rent in favour of such raiyats which they could not possibly rebut, and that it gave them a right to hold at privileged rates of rent when their rents were enhanceable. It is not in human nature that landholders should not, under such circumstances, try to protect their own interests by following a course which was not only not unworthy in itself, but also one which the legislature had specially provided for them And yet nothing shows their great moderation in this respect more than the fact that from 75 to 90 per cent. of the raiyats of these provinces unquestionably enjoy the right at present. There is no reason, however, that, because a man has a right of occupancy in a particular plot of land, the right should extend by possession for a single day to all land that might be let to him. Such a provision will act against the interests of the settled raiyats themselves. It would also hamper the extension of cultivation and the reclamation of waste lands.

"Nothing is more true than the observations on this point contained in the dissent of my learned and hon'ble friend, Dr. Hunter, which I shall read to Your Lordship :—

'As regards land brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps, at a lange outlay by means of his own servants, will, under the provision of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land; if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-right immediately begins to accrue. In no case will the landlord be permitted by special contract in his lease to bar the growth of occupancy-rights in land which he has reclaimed by his own servants at his own expense. Considering the pressure of the people on the cultivated soil and the existence of large unreclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land.'"

The Hon'ble Sir Steuart Bayley said :—"I do not propose to follow the hon'ble member in his discussion of the position of the occupancy-raiyat or that of his predecessor, the khúdkhást raiyat of the time of the Permanent Settlement, beyond saying that I dissent from the hon'ble member *in toto*. The Hon'ble Member told the Council that the khúdkhást raiyat paid the highest competition-rent; but in saying so he used an expression which had absolutely no meaning. I have no doubt that Lord Cornwallis was correct in saying that the landholder took the highest rent he could get; but while rents were regulated by custom the term 'competition-rent' did not apply at all. Nor will I follow the hon'ble member in his examination of the right of occupancy. That it meant a right to hold at beneficial rates I find no authority. Whether he was right in saying that the status given under Act X of 1859 was more desirable than the right held at the time of the Permanent Settlement I do not care to enquire, but I would ask whether the hon'ble member would deny that the khúdkhást raiyat had a right of occupancy in any land which he might hold in his own village. In conclusion, I maintain that the proposal before the Council is absolutely contrary to the whole scope and meaning of the Bill."

The Hon'ble Mr. Amír Alí said :—"It seems to me that sub-section (*1*) of section 21 is the natural consequence of the whole of the deliberations of the Select Committee with reference to the status of the occupancy-raiyat. It is a natural consequence of the determination of the Government to give to the occupancy-raiyat a sufficient amount of protection against eviction, and to give him the same security in regard to all lands held by him in the village which he possessed under the law to a specific plot of land; and it is a natural consequence of the desire of the legislature to prevent the habit of shifting raiyats which had been frequent in all parts of these provinces. In face of the evidence before the Council not only in the reports furnished by the various officers of Government but also by the Famine Commission, it will be going beyond the actual existing circumstances to say that there is no necessity for some such provision as this."

The amendment was put and negatived.

The Hon'ble the Mahárájá of Durbhunga by leave withdrew the following amendments :—

That to section 21, sub-section (*1*), of the Bill, the following proviso be added :—

"Provided that such land is not larger in area than the quantity of land continuously held by him for the last twelve years."

That sub-section (*2*) of the same section be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 22, sub-section (*1*) of the Bill be omitted.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that in line 4 of section 23 of the Bill after the word "unfit" the words "or permanently less fit" be inserted. He said:—"The object is to give the landlord sufficient protection against anything likely to permanently injure the land. I moved a similar amendment in Committee last year, but I believe that, although the Committee agreed with me in thinking that the landlord should have sufficient protection given to him to prevent the raiyat from doing anything likely to permanently injure the land, the wording of my amendment was not accepted. In any Bill of this sort, in which novel provisions for compensation for improvement have been inserted, it is only fair that some reciprocal advantage should also be given to the zamíndár. It may be the case even now that some members might find some fault in the wording of the amendment, but I do not pretend to be much of a draftsman. I dare say, however, the Council will agree to the principle that some protection at least should be given to the landlord from any act of the raiyat which is likely to deteriorate the productive powers of the land."

The Hon'ble MR. QUINTON said:—"I think the section as it stands gives the landlord all the protection he can reasonably claim. To say that the land has been made less fit would give rise to litigation, because it would be impossible for the Courts to determine degrees of fitness, and would make the raiyats more and more uncertain as to their position."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"For the reasons assigned by the hon'ble mover, I think the amendment a reasonable one. Some protection should be given to landholders in cases which the raiyats deteriorated the quality of the land and lessened the letting value of it."

The Hon'ble RAO SAHEB VISHVANATHA NÁRAYAN MANDLIK said:—"I think the amendment is worthy of being considered."

The Hon'ble MR. REYNOLDS said:—"As the Hon'ble Mr. Quinton has pointed out, it will be difficult for the Court to determine what has made the land permanently less fit for cultivation. It, therefore, seems to me an unreasonable suggestion, and I should prefer to leave the section as it stands."

The Hon'ble SIR STEUART BAYLEY said:—"I think the raiyat ought not to divert the land from the purposes for which it was let, and the amendment is one to which I have no objection in principle; but I cannot support it as it stands, because no Court could judge whether land had been rendered permanently less fit. I therefore think the wording of the amendment is objectionable, and that it will lead to litigation without that litigation being of any use."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA said:—"All that I want to place before the Council is that they should in some way recognise the principle that the landlord should be protected from any act of the raiyat which is likely to deteriorate the letting value of the land in future, and if the Council agrees to that principle I am sure the hon'ble member in charge or the Law Member might be able in a day or two to lay a better-worded amendment before the Council. When you give compensation to the raiyat for improvements, you must give some reciprocal advantages to the zamíndár."

HIS EXCELLENCY THE PRESIDENT said that the principle of giving protection to the landlord against improper usage of the land by the tenant was generally recognised in Europe. He would, therefore, suggest that the consideration of the amendment should be postponed, or else that the section should be passed and it be left for further consideration by the Council whether in a later part of the Bill some clause should not be introduced which would give all the protection which was desired.

The further consideration of section 23 was postponed.

The Council adjourned to Thursday, the 5th March, 1885.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 5th March 1885.*

## BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble the Mahárájá of Durbhunga's amendment that in line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit" be inserted was resumed this day.

His Excellency THE PRESIDENT said that, at the close of yesterday's proceedings the consideration of section 23 of the Bill was postponed, with the view of considering an amendment which had been moved by the Hon'ble the Mahárájá of Durbhunga. HIS EXCELLENCY understood that the hon'ble member in charge of the Bill thought he would be able to meet the Mahárájá's wishes.

The Hon'ble SIR STUART BAYLEY said:—"I propose to meet the hon'ble member's wishes in the following way, by the insertion of the words 'materially impair the value of the land or' after the words 'does not' in line 4 of section 23.

The amendment was put and agreed to.

The Hon'ble MR. AMÍR ALÍ said:—"Before I move the next amendment, which stands

in my name, I would beg permission to make an alteration in clause (a). The amendment will run thus:—

That after Section 24 of the Bill the following section be added:—

An occupancy-raiyat shall be entitled in Bengal Proper to transfer his holding in the same manner and to the same extent as other immoveable property:

'(a) Provided, however, that, where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent. on the purchase-money.

'(b) Provided also that a gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument

'(c) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

'(d) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.'

"With reference to the subject of this motion, I have already pointed out the reasons which lead me to think that the excision of the transferability clauses from the Bill has been a mistake, and I do not wish to take up the time of the Council at any length in support of the contention that those clauses should be restored. I believe it has been sufficiently established that the raiyats who possess the right of free transfer are more prosperous and better able to withstand the visitations of famine and scarcity than those who do not possess that right. And I believe it has also been sufficiently proved that the fears which are entertained by some people, that if the power of free transfer is given to occupancy-raiyats, the holdings will pass into the hands of money-lenders, are in the main groundless. The information collected at the instance of the Bengal Government, I think, has established conclusively that it is not the case that where the right of transfer is exercised by raiyats their holdings pass into the hands of of money-lenders; that in the majority of intances the transfers are, as a matter of fact, made to *boná fide* cultivators; and that wherever the right exists and is exercised the raiyats hold with the utmost tenacity to their holding; that their cultivation is better and their standard of living superior to those of other raiyats. It also, I believe, is shown upon the evidence to which I have referred that changes in the ownership of occupancy-holdings are less frequent than among the proprietors themselves. I will call one instance to the recollection of the Council, and that is the case of the guzáshtadárs of Shahábád. In view of these circumstances I would urge upon the Council the acceptance of my amendment. I know that the excision of the transferability clauses has met with the approval of the Executive Government and the high authority of Your Excellency; and therefore in bringing forward the present motion I do so with a certain amount of hesitation and diffidence. The question, however, is one of very great importance, and my apology for urging it on the Council consists in the testimony borne by the hon'ble member in charge of the Bill himself to the prosperous condition of the raiyats who possess the right of transfer. It is said that the right of transfer would prove detrimental to the interests of the zamíndárs. With reference to that I desire to make one or two observations, and I hope they will be considered carefully by the Hon'ble Peári Mohan Mukerji. The zamíndár has been given the power of selling up an occupancy-holding in execution of decrees for arrears of rent, even when there is no right of transferability attached to the holding itself Of course, where the right of transfer is attached to the holding, as in Bhágulpur and Shahábád, higher prices will be obtained for such occupancy-holdings. But in places where there is no right of transfer possessed by the raiyats the value of the holding will be nominal, and the price obtained will not cover the amount of arrears and the cost of litigation. Then, in the next place, we have made no change in the power of sub-letting. Well, sub-letting having been maintained without any change, it is not difficult to imagine that people wishing to buy occupancy-holdings can easily get round the provisions in the Bill against absolute transfer by simply offering a good salámí and getting the holding in that way. The very complications which the zamíndárs wish to avoid by keeping back the power of transfer will arise under the power of sub-letting. Therefore, by denying the right of transferability, by making it dependant upon custom, we have not gained much, but we have done considerable harm. I believe the Council is aware that, where the right of transferability has not been sufficiently established by long usage, a small fee is paid by the raiyat for obtaining the consent of the landlord; not unfrequently he has to pay, besides, a conciliation fee to the ámlá. In places where the custom has been long established, where the practice has been recognized by long usage, the raiyat does not pay any fee. The question having been raised as to the right of the occupancy-raiyat to transfer the tenure, there is every reason to fear that the zamíndárs, even in those places where the right of transfer has been up to this time exercised without question, will not allow it unless a substantial portion of the purchase-money is made over to them. Whether that eventuality is one which is at all desirable I would leave to this Hon'ble Council to judge. I believe the legislature would be extremely unwilling to leave, by the excision of the transferability clauses, any such loophole which will either endanger rights which do exist and are exercised at present, or will be likely to interfere with the growth of the custom of transferability which is admittedly doing so much good towards the prosperity of the raiyat. I will only add a few words to explain the meaning of the amendment. As a matter of fact, the Council will perceive that what I ask for is the re-insertion of the clauses in the former Bill with a slight modification, namely, in clause (a). That clause did not exist in the sections which were cut out of the former Bill. My object in inserting it is to give to those landlords on whose estates the right of transfer does not exist a substantial fee by way of salámí for their consent or acquiescence in the sale. The fee they now get is a fee of an unrecognised character. By clause (a) they will get a recognised substantial fee. Of course, in places where the right is exercised now without dispute, they are

not entitled to any fee, and it will not be right for them to expect any. In the second place, I confine the operation of the section to Bengal Proper. The Bengal Government in its letter of September last pointed out the reasons why it is desirable to confine the right of free transfer to Bengal Proper.

"In Bihár there are various reasons which render it expedient not to extend the right to the whole of that province independently of existing custom. I had accordingly brought forward a proposal in Committee to exclude Bihár from the operation of the proposed provision to render occupancy-holdings generally transferable. That proposal was not accepted, but the Committee have since decided to omit the transferability clauses with reference to the entire province. I agree with the Bengal Government in the view that the right should be confined to Bengal Proper alone, and consequently my amendment refers to Bengal Proper alone. As for the meaning of 'transfer' and 'gift,' they are defined in the Transfer of Property Act, and for this reason I do not think it is necessary to insert any definition of those words here. I beg therefore to move that the clauses which I have read out may be re-inserted in the Bill, and the numbering of the sections be altered accordingly."

The Hon'ble SIR STEUART BAYLEY said:—"I have been permitted to explain to the Council what my own personal views are on the subject; but as a member of the Executive Council, the Executive Council having decided that transferability of these tenures should not be accepted as a principle of general application in this Bill, it is not right that I should ask the Council to support the amendment of my hon'ble friend opposite, nor, under the circumstances, do I think that I am justified in again taking up the time of the Council in explaining why the Executive Council decided not to have it. In its present shape it is clear that the amendment is one which could not receive the countenance of the Government of Bengal, and I therefore think that any discussion on it would be of no practical value. But I would like to point out that the amendment does not provide for the great difficulty which the Government of Bengal had felt in reference to the necessity of excluding the money-lenders. The Government of Bengal, in a letter of September last and subsequent communications remarked that, even if the right is restricted to Bengal, still they could not support it, unless it was so hedged in that occupancy-holdings should fall only into the hands of persons who derived their main support from agriculture. The motion does not meet the *sine qua non* to which the Government of Bengal insisted, nor can it be accepted without other difficulties arising. It was left, for instance by this motion, for the Courts to decide what 'Bengal Proper' was, and in the next place the registering officer would have to decide what was the custom, and whether it existed or not. With these remarks I leave the matter in the hands of the Council."

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI said:—"When the Government of India recommended a provision for the free sale of occupancy-holdings, they were not ignorant of the possible injury which such a provision would give rise to. In their despatch to the Secretary of State the Government of India said:—

'So far we have considered the landlord's interests, but the protection of the raiyat is a matter of much greater difficulty. The money-lender by means of mortage might appropriate the whole profits of these holdings, or by foreclosure or purchase he might be possessed of the occupancy-right.'

"The question was thoroughly discussed in Select Committee, and it was found that not only high officers of State considered it to be a dangerous provision, but that the experience which the country had obtained from the operation of such a provision in the Dekkhan and the Sontal Parganas showed clearly that was not at all desirable. The Chief Justice of Bengal truly remarked with reference to this that he 'thought it equally true, on the other hand, that to give a poor population like the Bengal raiyats the means of selling or mortgaging their tenures at pleasure was a certain means of making them improvident or unthrifty.' It was, therefore, in the interest of the raiyats, and not in the interest of the landlords, that this provision was abandoned by the Select Committee. The hon'ble member has stated in support of his amendment that the condition of the raiyats in places where the custom obtained was one of greater prosperity than in other places. But the question should be viewed in its proper light. In places where this custom has obtained, the institution has been brought about under the operation of the rule of the survival of the fittest. In such cases the institution must necessarily be suited to the requirements of the locality, and must, therefore, be productive of much good; but to thrust upon a poor and improvident people the power to deprive themselves of their substance and homesteads, and of their means of living, is, I submit, not altogether consistent with the other provisions of the Bill. The Select Committee not only provided for a fee to be given to the landlord for his consent to the sale, but they also provided that the landlord could either accept the fee or veto the sale upon three grounds: *first*, that the purchaser was not a cultivator; *second*, that he was a bad character; and *third*, that he was an enemy of the landlord If the hon'ble mover of the amendment had moved an amendment for recommending the insertion of a rule for free sale with these restrictions, I would have had no hesitation in giving my support to it; but, although I should have found no difficulty in supporting it, I should have thought it was a dangerous one in the interest of the raiyat."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the

Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question of absolute transferability. It was too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

The Hon'ble Mr. Reynolds said:—"I agree with a great deal of what has been said by the hon'ble mover of the amendment, and especially with regard to what he said as to the additional value which would be given to the occupancy-right by the concession of the power of transferability. The question has been very fully and ably discussed by Mr. Field in a note to his Digest of the Rent Law, and his conclusion was in favour of declaring the occupancy-right transferable. I must add that I cannot altogether assent to what the Hon'ble Peári Mohan Mukerji said with reference to the precedents afforded by the Sontal Parganas and the Dekkhan. I do not think they are cases in point with reference to Bengal. The danger of giving to occupancy-raiyats the power of transferability is the fear of the lands falling into the hands of money-lenders, and this is a real danger in places like the Sontal Parganas and the Dekkhan, where the money-lending classes are an alien race, having no community of interest with the people. We have in the Sontal Parganas money-lenders who are Bengalís, and in the Dekkhan the money-lending class are Marwáris; but that is not the case in Bengal, and I am still of opinion that with certain safeguards the right of transferability might have been recognized in Bengal without any danger to the interests of the people. But at the same time I am not satisfied with the form of the amendment; for instance, in clause (*a*) it is provided that where the custom of transferability does not exist, a fee of 10 per cent. shall be payable to the landlord. Such a fee, in my opinion, is too high, and the hon'ble member has not provided for cases in which the right exists by custom subject to the payment of a fee. Then the hon'ble member proposes that a gift shall not be valid unless it is registered, but he has not provided for the case of sales being made under cover of a gift; and above all there is no provision in the amendment for ensuring that occupancy-holdings so transferred shall continue to remain in the hands of the agricultural classes. Though I believe the danger of the money-lender's intrusion has been much exaggerated, I admit that there is some residuum of danger in connection with this matter, against which precautions should be taken, and in the present state of Bengal I should be sorry to see the right of transfer freely imported into the Act without any safeguard against the evils to which I have alluded. I therefore cannot support the amendment."

The Hon'ble Mr. Hunter said:—"My Lord, I had not intended to speak on this amendment, because I am much in the position of my hon'ble friend Mr. Reynolds. I think the amendment in substance good, but I am unable to accept the form in which it is put. To my mind there can be no doubt that the evidence before this Council—evidence which has been carefully gone into by the Select Committee—has abundantly established the fact that the sale of occupancy-rights is growing into an established custom. I believe that by leaving the sale to custom we are subjecting poor men, needy men, to a number of exactions, and to a number of very serious inconveniences during the process of sale. But while I feel very strongly that it would have been a great advantage to the raiyat if we could have given the effect of law to that custom, I do not see my way to accept the amendment in the form in which it has been placed before the Council."

The Hon'ble Mr. Gibbon said:—"Much as I desire to see the right of transferability adopted and legalized, I must oppose the amendment. While I desire to see the right of transfer legalized, I wish also to see the just interests of landlords protected, and the country protected against the evils of landjobbing: neither this evil nor the interests of landlords are protected by this amendment. Much as I desire to see the right of transferability adopted, it should, in my opinion, be adopted for the whole province, and not for Bengal Proper alone. To legalize transferability for Bengal and not for Bihár will hereafter be looked upon as having prohibited it for Bihár. The hon'ble member has given many reasons for desiring to give the right of transferability, but he has given no reason which is not equally applicable to the circumstances of Bihár; if they apply to the circumstances of one province, they apply equally to both. If we legalize transferability in Bengal, not in Bihár, it should be by a separate Bill. I am sorry therefore I must object to the amendment."

His Honour the Lieutenant-Governor said:—"This is an old question which has passed through several stages of consideration up to its final abandonment by the Government. The hon'ble member who moves this amendment will not doubt that, as far as my own views go, I sympathize entirely in the position he takes. The recognition of the free right of transfer on behalf of raiyats having occupancy-rights would, in my judgment, ultimately be a great benefit to the country, though I am willing to admit that, as regards its present adoption, there is no question in which my own opinion has undergone greater modification than in this one. In our first proposal to the Government of India two years ago we recommended the adoption of the right of transfer throughout Bengal in the belief, which we thought sufficiently established, that the practice of transfer was generally prevalent; but later enquiries seemed

to show that what might be safe in Bengal would not, under the peculiar conditions and circumstances of Bihár, be safe there; and in our second letter we desired to confine the exercise of the power to the districts of Bengal Proper. But even as regards that Province the point which claims especial consideration is that the zamíndárs themselves have shown the strongest opposition to the acceptance of the proposal; and certainly I can speak from my own experience that, in all my interviews with zamíndárs on the subject of this Bill, no question has been more prominently brought forward and opposed than this one, and further that the opinions which have been expressed in non-official communications and in the writings of the Press have condemned the policy as one which is likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture. We have thus to take account of the fact that there is a strong outside hostility to the legal recognition of the right of transfer in this class of raiyats. I fully support the view taken by my hon'ble freind Mr. Reynolds that any reference to the case of the Sontal Parganas or that of the Dekkhan affords no parallel to the circumstances of Bengal. In the Sontal Province there is an aboriginal people, rude, half-civilised and uneducated, amongst whom large numbers of money-lending Bengalís are settled; and to open the door to the transfer of occupancy-rights among such a people would undoutedly lead, and has already led, to evil effects. But the parallel does not hold good where you have to deal with a people who are beginning to know the value of landed property and can use the discretion as to parting with it or not. Still after much consideration the safer view has prevailed that the introduction of any provisions like those which the hon'ble member has moved should not form a part of our present legislation; though in accepting this view we must all realize the fact that we do not thereby close the door to the growth of a system of transferability. The fact is that the practice obtains all over the country; it extends to a considerable extent in Bihár; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district in Bengal is one which no one can dispute; it comes before us on the unquestionable authority of the Registration Department, and is admitted by the landholders themselves. Therefore, I think it is quite our wisest course to let the practice develop itself, and in a few years it will be very much easier to recognise the practice from the fact of the custom having become established. In view of all these circumstances I would strongly press upon the hon'ble member to withdraw his amendment."

His Excellency THE PRESIDENT said:—"As a reference has been made to my connection with this subject, I should like to have an opportunity of expressing my own opinion upon it. In the first place, we have to consider the mattter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have hitherto maintained this view. It is therefore a question as to how far we should be justified in giving the occupancy-tenant a right carrying a money-value to which he has not hitherto been entitled by law. That he should have it by custom is a totally different question. It stands to reason when a landlord has allowed such a custom to grow up, when the landlord has permitted sales of occupancy-interests to take place, it is but fair and just that the actual tenant, who has paid consideration for the occupancy-right, should be allowed to dispose of it upon the same conditions as those upon which he bought it. Without, however, wishing to pronounce dogmatically upon this part of the question, I have to observe that when the matter was brought to my notice the Government of Bengal had already decided that the legalising of the custom was at all events not desirable in Bihár. It was also decided that its application to Bengal must be hedged and restricted by various safeguards, one of which consisted of the right of the landlord to bar the transfer where the transferee was objectionable to him. Thus it became apparent that even its application to Bengal might be also questioned. I can quite understand that the hon'ble member who has moved this amendment should take a different view of the question, because I believe that he is more immediately acquainted with a part of the country where the raiyats are in a very satisfactory and strong position; and undoubtedly, where that is the case, transferability is not only a convenience, but works without injury to the raiyat and with advantage to the public. But, on the other hand, we must remember that if the amendment were to be adopted we should at once confer upon vast numbers of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depends. However, I need not enlarge upon this view of the question, because the remarks which have already fallen from the Lieutenant-Governor I think amply justify the view which has been taken of the subject by the Government of India. I think it right, however, to say, on behalf of myself and my colleagues, that if, at this stage of the proceedings, arguments had been adduced in favour of such an an amendment as that which has been proposed by Mr. Amír Alí, we should have been quite prepared to give to them that attention which they deserve. But, so far from that being the case, even those other members of the Council who are disposed to look with an indulgent eye upon the principle in the abstract, announce to us that they do not feel themselves in a position to support it. Under these circumstances, we—I for one, and I imagine all my colleagues—feel that there is no reason whatever why we should depart from the conclusion at which we originally arrived."

The Hon'ble MR. AMÍR ALÍ then by leave withdrew the amendment.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that to section 25 of the Bill the following clause be added:—

"That he has defaulted to pay within fifteen days the amount of a d decree for arears of rent passed against him"

He said:—" Both the Rent Commission and the Government of India recommended the abolition of the provision for ejectment for non-payment of rent simply on the ground that it would be incompatible with the condition for free transfer of a raiyatí holding; but now that the provision for free transfer has been expunged from the Bill, I submit that the permissive provision for ejectment for non-payment of rent be inserted in the Bill. The power of ejectment has been enjoyed by landholders from 1793, and, notwithstanding all that has been said by some officers, I challenge not only strict enquiries but any reliable evidence of the fact that the power has been abused during such a long time. And when there is no evidence of that fact I submit that it will be inexpedient to deprive landlords of a right which gave them an effective remedy in cases of non-payment of rent. It acts as a threat on the raiyat against default and delay in payment of rent, and I think the power is essentially necessary to enable landlords to collect their rents with punctuality now that the provision of free sale has been done away with. It has been observed by my hon'ble friend Mr. Amír Alí in moving his last amendment that power has been given by the Bill to put up to sale a defaulting holding, but I need hardly inform the Council that it is no new power which the Bill has given to landholders; it is a right which they have all along enjoyed but which the Committee thought was of no earthly use to them, because when a man has the choice of either putting up a defaulting holding to sale or of applying for ejectment it will be in the interests both of the landholder and the raiyat that the landholder should apply for an order of ejectment and not for sale. An order for sale involves much additional cost on the raiyat in respect of the necessary processes of Court, such as the proclamation for sale, sale-fees, and so forth, and in the majority of cases it is found, as has been justly remarked by the Hon'ble Amír Alí, that the proceeds of sale do not cover even the cost of processes. The provision for sale as a substitute for the power of ejectment is liable to this further objection, that even when a sale has been effected it is in the power of the raiyat to apply for the reversal of the sale, and a suit to that effect may be carried on for years, and the question whether the sale was vaild or whether it was invalid would not be settled till years after the sale was effected. In the meanwhile the purchaser has invested money in the land, and other rights have accrued; and if the sale is ultimately set aside both the raiyat and the landlord will be seriously damaged. I submit that in the interests of the landlord and that of the raiyat himself, the provision for ejectment contained in the present law should be maintained."

The Hon'ble Mr. Evans said:—" I do not feel justified at this stage of the proceedings in supporting a motion for allowing the old form of ejectment. I always had great doubts whether the change made in the Bill would be beneficial; but as this is one of the cardinal points in the Bill I do not think there will be any chance of the Council reconsidering the matter, which has been settled and which has such great authority in its favour.

"I entertain very considerable doubts as to its working well. I think that, instead of having to resort to these execution-processes, the landholder should be able to ask the Judge, in cases where there was no bid or an insufficient bid, to stop the sale and make the amount payable within fifteen days. I have not made any substantive proposition, because I am not clear that the relief will be sufficient to justify my introducing any amendment of that kind. I feel that there are inconveniences to the zamíndárs, and I can only hope that it will work out better than the ordinary execution of money-decrees is working in this country."

The Hon'ble Mr. Gibbon said:—" Had the hon'ble mover accepted the suggestion I threw out to him in Committee that the order for ejectment should act as a full acquittance of the decree, I would have given him my co-operation. The hardship in adopting the old law, allowing the judgment-debtor to be ejected if he does not pay the amount of the decree within fifteen days, lies in the fact that when he is ejected the decree still holds good against him, and he is still liable to pay the full amount of the decree. I accept the provisions of the Bill simply as the better of two evils, not as an effectual remedy. The provision in the old law which allowed the zamíndár to eject if the defaulter did not pay the amount of the decree was valuable only on account of the moral effect it had on the raiyat; and as such it was necessary, I think, to embody it in the Bill; at the same time the difficulties in the way of transferability which have been stated by the Hon'ble Mr. Evans are very true. I have often found that nobody would bid at the sale of the raiyat's holding and the holding had to go back to the same raiyat. At the same time the difficulties stated by the hon'ble mover of the amendment are also true; process and sale fees are so exorbitant that the amount realized from a sale is often hardly sufficient to cover them. The remedy lies in reducing process and sale fees and in applying a rule of percentage on the amount of the decree or the amount of purchase-money realized."

The Hon'ble Sir Steuart Bayley said:—" I understand the hon'ble mover of the amendment to assert that the Rent Commission originally recommended this system of ejectment on the ground that, as there was to be a free transfer of occupancy-holdings, ejectment would be incompatible with it, and he also said that the Government of India had settled it on this ground. But I must point out that this was an entire mistake. Neither the Rent Commission nor the Government of India connected it with the question of free transfer generally. What they did connect it with was the fact that sale for arrears of rent was provided, which is quite different from the question of free transfer generally; consequently the fact of having removed free transfer from the Bill makes no difference whatever in the grounds urged both by the Rent Commission and the Government. I will read what the Rent Commission said:—

'As an occupancy-holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of

rent. We have accordingly enacted (section 20, clause (e)) that no raiyat may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such raiyat and his landlord have contracted in writing that the raiyat shall be liable to ejectment for a breach thereof.'

"And they went on to express their dislike of the system of forfeiture. I think the hon'ble member will find also that the Government uses the same language. The hon'ble member will, therefore, see that the question did not in the least depend on the question of transferability generally, but particularly whether the occupancy-right should be sold for arrears of rent or not; and, as we have maintained the process of sale, we are justified in saying that we are carrying out the views of the Rent Commission, the Government of India, and the Secretary of State, all of whom have held that where we have the right of sale we do not want also the process of ejectment. At the same time I may remind the hon'ble member, as I pointed out before when the question was discussed two years ago, that though evictions through the Courts were not frequent, yet illegal eviction was very frequent; and I at that time quoted an experienced Magistrate, Mr. Edgar, who had a return prepared of complaints preferred in his district on this ground, which amounted, if I recollect right, to some 500 in two years. The Government of Bengal had supported this statement. As a matter of fact it is not the action of the Courts in this matter which we dread; it is the threat of ejectment hanging ever over the head of the raiyat which paralyses his industry, and makes him an easy prey to extortion and oppression. It is this tremendous engine in the hands of unscrupulous subordinates which we desire to restrain. The hon'ble gentleman admits that the real use of ejectment is that it acts as a threat, and I think he said it had a very moral effect. We are agreed as to the power, but scarcely as to the moral effect, of the threat. He would wish us to believe that this power is desired in the interest of the raiyat. Such an interest I believe the raiyat and the raiyat's well-wishers would very gladly forego, but I can hardly suppose that my friend uses the argument seriously. That it is in the interest of the zamíndár I can understand, and if he puts it on that ground there is a fair scope for argument; but when he claims that it is in the interest of the raiyat that he should be ejected and the surplus value of his holding and improvement should go into the pocket of the zamíndár I do not understand. More especially I do not understand it as applied to the amendment in its present form. In order to give it even a semblance of fairness he should have supplied the omission which the Hon'ble Mr. Gibbon has pointed out; he has not put in any provision that ejectment in execution of a decree should be deemed to be a full satisfaction of a decree; he has left the raiyat liable for the amount of the decree even after the landlord has got the land in his own possession and has got into his own pocket the value of any improvements effected by the raiyat on the land. The Hon'ble Mr. Evans has thrown out a suggestion that there might possibly be made a relaxation in the form of the section in case of the sale of the holding not fetching the full amount of the decree. That question was brought before the Select Committee and was discussed, but I do not see any amendment on the notice-paper concerning it. I may, however, inform the Council that one of the grounds on which it was felt to be unacceptable was this, that it would make it the landlord's interest in ever case to prevent the raiyat's holding being sold for anything like its full value; if he could fall back upon ejectment without compensation when the price bid was low, it would clearly be his interest to keep the price low, and a powerful landlord would have little difficulty in doing this by keeping away other bidders; but the thing which strikes at the root of the amendment is this, that it is really unnecessary: ejectment is of necessity included in sale, it is merely a question of whether improvements should be forfeited also, for it is obvious that the landlord in the process of sale has a power of ejectment; he puts the holding up to sale, and if he does not get a bid he buys it for four annas or eight annas and the man is ejected. I do not think it necessary to go beyond this. On the main question I may say that we have intentionally and deliberately restricted the power of ejectment, because we think that at the best it is a dangerous power, and it has been part of the deliberate policy of the Government from the beginning of the rent question, from the despatch to the Secretary of State and his reply, to restrict ejectment in every way we can. For these reasons I shall vote against the amendment."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After what has fallen from the Hon'ble Mr. Evans and the Hon'ble Mr. Gibbon I wish to ask His Excellency's permission to move the amendment in a modified form namely, that—

'Ejectment under this section shall be in full satisfaction of all demands under the decree.'"

The Hon'ble SIR STEUART BAYLEY said:—"I think it is rather late in the day to raise that question now; it was raised and discussed in Committee, and the hon'ble member has deliberately moved his amendment without it. I do not think that it is quite fair to present a new amendment now in consequence of suggestions which have been thrown out in the course of the debate, but at the same time I do not wish to object to the amendment in this case being put.

His Excellency THE PRESIDENT allowed the Hon'ble Bábú Peári Mohan Mukerji to propose an amendment in the modified form, which he asked permission to do.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I rely on the statements which the hon'ble member in charge of the Bill has read from the report of the Rent Commission and the despatch of the Government of India to the Secretary of State, and it was those statements which I had in my mind when I referred to those documents. The statements may be differently interpreted, but in connection with the fact that the power given to the landlord to

put up to sale a holding for which rent is due is not a new power, but one which landlords have exercised since 1793, if not from an earlier date, I think that no meaning other than what I have put on it can be given. The mistake of the Rent Commission and the Government of India lies in supposing that the power of bringing defaulting holdings to sale is a new power given to landholders. But that is not so. Then the hon'ble member has asked how the provision for ejectment can be in the interest of the raiyat. I have explained fully in the speech I have already made that when a sale is effected certain expenses must inevitably be incurred; expenses of application, expenses of proclamation, fees of sale, and so forth, must ultimately fall upon the raiyat; and if the sale-proceeds do not cover them, the landlord has the right of realization by the sale of the goods and chattels of the raiyat and other processes; whereas the order for ejectment will free the raiyat from any such expenses; and if in addition to that it be conceded as an entire satisfaction of the decree in the execution of which ejectment is made, nothing will be more welcome to the raiyat, as it will save him not only from the expenses incidental to sale, but from all liability under the decree. I submit that in this modified form the proposal should commend itself to the Council."

The Hon'ble MR. EVANS said:—"If the zamíndárs are willing to put it in this form, I should be inclined to give preference to it, provided it was coupled with the further provision giving compensation for tenants' improvements. That, however, is a matter which will require careful consideration, but it seems impossible that at this late stage of the proceedings it can be accepted. As I said before, I should have been glad to support any proposal which would have the effect of modifying the rigour of the law, because the court-fees and process-fees swallow up the value of the property in dispute. From some reliable data which I have recently received as to the summary process of distraint for irrigation-dues, I find as a positive fact that in the majority of cases where the amount of the distraint is small the costs of process far exceed the amount to be paid. I feel that it is in the power of the Executive Government very greatly to diminish the evil by lowering process-fees, and I can only hope that in the interest of the raiyat the very warm anxiety displayed by the Government will induce them, having regard to all the circumstances, to use some means of reducing the cost of process. If that is done the raiyats will have a great benefit conferred on them."

His Honour THE LIEUTENANT-GOVERNOR said:—"The inconvenience of allowing fresh amendments to be raised in the course of the discussions has been forcily exemplified in this instance. It seems to me very unreasonable that the hon'ble member should, after having gathered the views of other hon'ble members upon a question brought forward by him, raise a new discussion in an amended form in the hope of catching some votes in support of his proposal. Here we have been led into a long discussion as to the character and amount of process-fees. Instead of adhering to the amendment of which he gave notice, he raises a question on a point with regard to which the Council has received no notice. I shall certainly oppose the amendment. I think it is not convenient to review the subject in any modified form after the question has been thoroughly discussed and the proposal has been rejected."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to section 25 the following clause be added:—

"(c) that he has not paid his rent at the appointed time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that to section 25 the following clause be added:—

"that he has committed persistent waste by neglecting the repair of irrigation-works or caused the deterioration of the soil"

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. I think a provision like this will be a necessary provision by virtue of the addition which been made to section 23 on the motion of the honourable member in charge of the Bill. The Council has already decided that the raiyat should not have it in his power to deteriorate the quality of the land, and I think in all consistency we should see that some penalty should be attached to a breach of that provision. I think the form in which the amendment is put is the form which the penalty should take for a breach of the provision."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. It appears to me that a good deal of what the honourable member in charge of the Bill has said in speaking on the amendment in regard to ejectment for non-payment of an arrear applies as much to this amendment. The objection is to what the hon'ble member called the moral effect on the raiyat, not a moral effect in compelling him to do his duty, but in dealing with any claim of whatever kind made against him by his landlord. I do not think it can be fairly said that, because we have inserted in section 23 the words that a raiyat must not materially impair the value of the land, it follows that we should provide the penalty of ejectment as a proper penalty for a breach of duty in that respect. What the amended clause proposes might be a ground for damages or for an injunction, but I cannot admit that it will be a reasonable ground for ejectment, the landlord having his remedy of not being injured as long as the rent is paid and having the right to sell in default. Then the words proposed seem to me to be dangerously wide. It is not easy to say what is persistent waste, or that a man has neglected to repair irrigation-works without some definition of his duty as to such repairs. I do not think such a suit would be likely to be successful, but there is the fact that danger would arise from the moral effect such a provision is likely to have. The same remarks apply to the words 'deterioration of the soil.' We should, I think, leave the landlord his remedy by way of a suit for damages or injunction against the cultivator, but I am strongly opposed to the principle of suing for ejectment on such grounds."

The Hon'ble SIR STEUART BAYLEY said:—"What I had to say has been anticipated by the Hon'ble Mr. Reynolds. As I said before, it has been the deliberate policy of the Government of India to restrict the grounds for ejectment. On looking at Mr. Field's Digest, I see that in giving the substantive law in the text that 'the raiyat shall not, without the consent of the landlord, materially alter the condition of the land held by him, and render it unfit for agricultural or horticultural purposes' the remedy is stated to be a suit for damages or an injunction to restore the land to its original condition. He says the conditions of good agriculture are not sufficiently understood in India to raise a question of this nature. The hon'ble member will recognize Mr. Field as an authority on a point of this kind; but, without basing my argument entirely on Mr. Field's authority, I think the importance of not permitting the threat of ejectment in every case between landlord and tenant is so great that when other remedies can be found we ought not to give such a power. I therefore think we ought not to accept this amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendments that to section 25 the following clauses be added:—

"(e) that he has, without his landlord's written consent, sub-divided or sub-let his holding, or any part thereof, save as expressly authorized by this Act;

"(f) that he has by writing, or statement reduced to writing, disclaimed the title of his landlord before any public officer or Court."

The Hon'ble MR. EVANS moved that for sections 28 and 29 the following be substituted:—

"No instrument, whereby an occupancy-raiyat is bound to pay for land in which he has an occupancy-right a rate of rent in excess of the rate which was payable by him in the agricultural year next preceding the execution of the instrument, shall be admissible in evidence unless it is registered.

"No occupancy-raiyat whose rent has been enhanced in respect of any land in which he has an occupancy-right shall be liable to any further enhancement for fifteen years from the year in which his rent in respect of such land was last enhanced."

He said:—"It is with very great regret that I have to make many of the objections which I am about to make, because I recognise that a great portion of the matter I am objecting to is intended to give protection to the raiyat, and I am thoroughly desirous that the raiyat should be protected as far as it can be done by means of a workable scheme; and so far I am entirely at one with the views and objects which have moved the Government of Bengal in this matter, and have no desire to diminish in any way any protection which we can give justly and in a workable form to the raiyat. What I fear is that in the form in which the section stands it will, as a matter of fact, be unworkable in practice and will create more mischief than it will remedy. Some objections may, no doubt, be raised to the amendment which I propose, but I have no kind of partiality for the particular form of my amendment as long as the matter is substantially dealt with in some form or other. We find, as would be expected with regard to a matter of this kind, that the increase of rent paid by an occupancy-raiyat with a fixed tenure must be, from the nature of things, either by decree of Court or by agreement between the parties; because, if there is a dispute between the parties, there is no means of enhancing the rent but through the Court, and if there is no dispute the parties settle the matter between themselves, as they do in regard to all other matters in which they are able to agree. With regard to the provision which we have made in this chapter for settling disputes which arise between landlords and occupancy-raiyats as to increases of rent, where the dispute is of such a nature that they cannot settle it without going into Court, I am entirely satisfied and have no objections to make. But it must be known that it is not desirable that the parties should be forced to go into Court when it it not necessary and when the dispute can be settled less expensively out of Court. We know that in this country litigation is costly, and in many cases leads to the ruin of one or both of the parties, and more especially of persons who are ignorant. As to the restrictions on settlement by agreement, there are very serious objections that occur to me. Section 28 prescribes that if enhancement by agreement is not made exactly according to the provisions of the Act, the result will be that it is void; that is to say, that the agreement, so far as the increase of rent is concerned beyond what the raiyat was paying the year before he came to an agreement, is absolutely and entirely void. The result is not that money so paid voluntarily under a void agreement is recoverable; no doubt the landlord will keep the money in his pocket, but if at any time he sues for rent at the enhanced rate which the raiyat has consented to pay, the raiyat will be able at once to say he has not to pay that amount of rent, because the increase of rent by agreement or consent is unenforceable. The contract is void. This section goes on to say that it shall be void in all cases—that is the effect of it—excepting in cases provided for in section 29. And it embodies this condition, that the agreement must be in writing and registered; that is to say, it must be a registered contract, and you cannot register a contract unless it is in writing. The next point is that the rent as it existed the year before must not be enhanced by more than two annas in the rupee or 12½ per cent.; and thirdly, the contract must fix the rent for a term of at least 15 years. That is to say, it prescribes that every contract which enhances any man's rent, which binds him to pay a higher rent than the year before, is *ipso facto* void if it does not contain a statement that the rent is fixed for 15 years. The contract is void by the absence of that formality. The next provision is that the registration of the contract shall not be ordinary registration, but must be a registration under this section. The section provides that—

'The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 96 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.'

"Practically, as far as I understand the provision, it directs that the registration of all contracts which bind a raiyat to pay more rent than he paid the year before should be a special registration. Whether the provision that the registering officer shall ascertain all these things is directory or imperative is not very clear, but it is apparently contemplated that the registration shall be special. But later on it is provided that the Local Government may make rules for the guidance of the registering officer for making registrations under this section; so that it does seem to be some kind of special registration, and therefore documents registered under the ordinary law of registration will not be considered to be registered according to this section, and such registration will be void. The Council will see what difficulties will arise on that point when I explain what the difficulties are which beset it. Having explained to the Council that unless all these conditions are fulfilled a contract is void, I shall now consider what is the practical effect of them in two classes of cases. The first class of cases is that of a very large number of raiyats in this country who have no written engagements for their rent. The Council is aware that it is provided in the Permanent Settlement Regulations that the zamíndár shall give a pattá and the raiyat shall give a kabúliyat, and that engagements shall be in writing, and that the writing shall be in a certain form. The Council is also well aware that it was found absolutely impossible to bring about these results. The penalty prescribed was that the zamíndár should be non-suited if he did not produce an engagement in the prescribed form. So far as a form is prescribed, it is repealed by the Regulation of 1812, and so far as there is an authoritative order that engagements shall be in writing, it has remained a dead-letter in almost every part of the country from that day to this. In the Act of 1859 the provision is kept up that either the landlord or the raiyat may claim a written engagement, but it is optional and has very little effect; and there are still large tracts of country in which written engagements, especially amongst the poorer and smaller classes of raiyats, are not as a matter of fact in writing. The reason why this provision has had no effect is that there is a considerable mass of raiyats who have a rooted and traditional hatred of putting their names to any kind of document. Now, even if the Council is prepared to enact that every engagement for rent should be in writing, which no one has suggested, I do not see how we can possibly hope, if raiyats have this feeling, that any legislation we can make will secure engagements being in writing, and I do not see how we can secure that variations of unwritten engagements should be in writing. If an engagement is not in writing, how can any variation of it be expected to be in writing; I think we may take it as certain that people who do without written engagements will continue to do without them, and that we shall not be able by any Act to drive them to have written engagements. Then what is the position in case the Bill stands unamended? The engagement to pay a certain rent is unwritten, and the variation by which a raiyat agrees to pay a larger amount of rent will also be unwritten, and so long as there is peace between the parties the raiyat will go on paying his rent. But it may be that years after the enhancement of rent has been made the landlord or his successors will have to institute suits for arrears of rent, and then the tenants, if well advised, will plead that the enhancement was made after the passing of this Rent Act, and the enhancement is therefore void *ipso facto*, because it was not made in writing. They may say, 'It is true we have paid the enhanced rent for many years, but still the Court cannot enforce it; therefore we demand to be put back to the position in which we were five, six or ten years before the enhancement was made.' I think every one will agree that that is not a desirable state of things; and the remedy is simple, namely, to allow things practically to remain in the position in which they are now with regard to oral engagements. At present there is no particular law on the subject, but, owing to the impossibility of proving an oral agreement to pay enhanced rent, the zamíndár has to prove that the raiyat has actually paid the enhanced rent for some years. He will not go into Court for a decree for enhanced rent on the ground of an oral agreement. But what happens is this. When a raiyat has orally agreed to pay an enhancement rent and has paid it for two or three years, the landlord, when he sues for arrears, proves that the raiyat is now paying a certain amount of rent which he had agreed to pay, and, having paid that rent for some time, it is abundantly clear that he must have agreed to pay at that rate; so the Court gives a decree. The reason why he gets a decree is that there is no law which makes oral agreements void. If you make oral agreements void the result will be that the raiyats will have the defence which I have stated. I do not think it is in accordance with the principles of equity or of natural justice to allow such a defence. The English Statutes which provide that certain engagements shall be in writing, such as the Statute of Frauds, were passed for purposes of public policy; but we find that in those Statutes exceptions are made in favour of contracts part-performed. I think it would be unreasonable to make a provision to this effect without any limitation or exception whatever, so that even 20 or 30 years after an enhancement is made and cheerfully submitted to by the raiyat, he may show that the original engagement was void, and he can then revert to the position in which he stood before that time. I take it that the principle which was found necessary in England that part-performance should be a substitute for the formalities must be recognised because of the ordinary way in which mankind transact their business, and because of the way in which certain classes of raiyats make their engagements, and that some provision ought to be made in the Bill to provide that part-performance of the contract shall be sufficient as proof of such an agreement having been made. I have not embodied that in my amendment, because I thought it better to propose an amendment in wider terms. But I wish it to be clearly understood that it is not my intention to place the raiyat in a worst position than he is in now in regard to oral agreements. I would be perfectly willing, although it is not contained in my amendment, if the Council think it necessary, in order to meet the real difficulty which I have pointed

out, that they should prescribe how much part-performance of an oral agreement should be sufficient. I mean to say that at any rate I would not be disposed to think that an allegation of the payment of one month s rent would be sufficient to satisfy the Court. No Court would be satisfied of the existence of such an agreement unless the raiyat had paid at the enhanced rate for one year at least. It would be a matter for the Council to consider whether the carrying out of an agreement for one or two years should be deemed sufficient instead of a written contract. If persons will go on without written contracts, you cannot force them to have written contracts; then you must provide that there must be such sufficient performance of the unwritten contract as to satisfy the Court that the arrangement has really been made and, what is more, that it has been acted upon. I have always considered that the fact of a raiyat having paid rent at an enhanced rate for one, two or three years without demur is much stronger evidence of such an agreement having been made than a registered document; because documents are often collusively given. I have had cases in which the raiyat has said that he gave a registered document because the landlord had paid him something to do so in order to injure another man, and they have sometimes actually produced witnesses to prove that they had been told that they would not have to pay increased rent under the registered contract; but when we find that a man has actually paid at the enhanced rate for two or three years, we may surely be satisfied of the reality of the transaction. We shall have an unworkable scheme if we keep the section as it is now, and I apprehend that it will have to be amended some way or other.

"Then, having told the Council of this difficulty, I come next to consider what will be the effect of this section on written engagements. First, I will observe that I do not think that we shall be able to induce the people of this country to change their common forms of pattá and kabúliyat. I do not anticipate that we shall be able for many years to come to get the people to deviate in the smallest degree from their common forms. At present I seldom or never see a kabúliyat in which the raiyat has stated 'My rent in the last year was so and so; I have now agreed to pay the further sum of so and so.' There may be a few such agreements of that kind, but I doubt if it is ever done; the tenant will on giving pattás and kabúliyats in the same way as before, containing no statement except that he agrees to pay a certain rate of rent for certain land. The raiyat will give a fresh kabúliyat stating the amount he has to pay under the new agreement, and stating nothing else. The first effect of such written engagements will be that they will be void unless the kabúliyat contains in itself a statement that the rent is fixed for fifteen years. Pattás and kabúliyats will not as a matter of fact contain that provision, and why should you make it void because it does not contain that statement? I do not object to the term of fifteen years, but you have made it imperative that it should be so stated in the contract, and it will follow that when the enhanced rate is attempted to be enforced the raiyat will say that the kabúliyat which he has given is *ipso facto* void, because it does not state the term of 15 years for which the enhanced rent is not to be altered; it may state no term or it may state a shorter term. Instead of making that an imperative incident in the form of the pattá and kabúliyat, the object will be very easily attained by merely stating that the legal effect of the agreement shall be that the rent cannot be enhanced again for fifteen years.

"Then I come to a further matter, namely, registration. I feel that there is considerable force in what Mr. Hennessy and others have said that it is very hard to compel registration of contracts for such small amounts, that the registration-fees are very high, and the distances at which the registration offices are situated are great. But desirous as I am to protect the raiyat, and admitting that registration does give him some protection against false documents which a gumáshta may have manufactured and to which he may have affixed each man's mark (for in most cases the raiyats cannot write), therefore, although it is in many cases very inconvenient to cause the registration of documents of such small amounts, amounting in some instances to an enhancement of only two annas, on consideration I think it is better to modify rather than abandon this rigorous provision, and the practical working of my proposal would be this, that, although contracts may exist between the parties, no contracts at all will be produced in Court. And with regard to these small raiyats, they will be in the same position as if the engagements with them were unwritten, because, although there may be written engagements, they being unregistered will not be admissable in Court, therefore the Court will simply have to look to the prior rate of rent paid. Although we are breaking the ordinary rule that registration is not necessary in respect to small matters, it may be worth while to do so; but in going this distance I am going a very considerable way. It is because I will not consent, so far as I am concerned, in any way to participate in the formation of any scheme that will not work that I am making these observations now. I am willing that contracts, if in writing, should be registered, but if there are no registered or written engagements part-performance should be considered sufficient.

"I come to a further objection. I pointed out that the section appears to require special registration; that the registering officer has to make special enquiries under sections 74 and 75 of the Bill as to which the Government has to prescribe certain rules; so that if the contract is not registered under this special registration it will be held that that omission renders the written instrument void. As I have said, a pattá or kabúliyat will not shew any enhancement at all. The result will be that these pattás and kabúliyats will be documents some of which will be compulsorily registered under the present Registration Act and some of them under this special registration. Every prudent man will take care, if a contract is of sufficient value to make it worth while, to register it, and if he does not do so he will have to prove part-performance. If it does not state any enhancement, he will register it in the ordinary form. Then if

it does create a liability to pay a higher rent, though it do not be stated, will it be void because it is not registered in the special form? If it is not to be void, that should be specially stated in this section. Then the registering officer is directed to hold an enquiry under this section; first, whether any abwábs are included in the document. Considering that abwábs are illegal and the Courts will not enforce them, what is the use of compelling the registrar to see that the kabúliyat does not contain any provision for the payment of abwábs? If we are going to do this with regard to pattás which bind the raiyats to pay more rent, why not make the same provision with regard to every pattá? Why should we not provide that no kabúliyat shall be registered which has a provision for the payment of abwábs? The answer is that if it does contain such a provision the Courts will not enforce it. I am speaking of the difficulties which will increase the cost of registration. The registering officer has also to hold the enquiries stated in section 178. That section contains all the restrictions in contracts which we have thought it necessary to make under the Act, and again I say that whenever a contract is brought into Court and it appears to the Court that any of the provisions of the Act is contravened, or that the contract contains covenants contrary to section 178, such covenant will be declared by the Courts to be void. But we are not content that they shall be declared void by the Courts; we wish to prevent a tenant from signing anything until long enquiries have been made on difficult questions of fact as required by section 178. The registering officer will first have to ascertain the fact whether the raiyat is an occupancy-raiyat at all; then he will have to go into several other matters, one of which (sub-section (3), clause (*a*)) is as to whether the contract takes away the right of a raiyat to transfer or bequeath his holding in accordance with local usage; he has to enquire whether there is a local usage, and if that usage is contravened; but that is one of the matters very much in dispute in some parts of the country. Then section 178 provides that nothing in the section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land; so that if the lease appears to have anything to do with waste land he will have to satisfy himself that it is *bonâ fide* for waste land only, and then he will allow a relaxation of some of these conditions. I do not think that all these enquiries are necessary; they are exceedingly well meant, and I entirely sympathize with the objects of His Honour the Lieutenant-Governor, and my very deep respect for his judgment and knowledge renders it painful to me to differ from him. Still when I see these difficulties I feel I shall be neglecting my duty if I avoid pointing them out so that we may make such provision as may be necessary. Considering the great difficuties in regard to registration, you are making it more difficult and more expensive, because the registering officer may keep the parties dancing attendance upon him for weeks together because he is not satisfied as to the existence of certain local customs and other matters with regard to which he is required to satisfy himself. And then, when all these investigations are done, what is the effect? All the registering officer has done goes for nothing, because when documents which are required to be registered are taken into Court the raiyat is at liberty to prove that the document does contravene the provisions of the Act, and if he can prove that he can afford to say 'I told the registering officer a number of lies and so satisfied him, but I can prove by indisputable evidence that as a matter of fact the contract does contravene certain parts of this Act'; and the result will be that all the investigations of the registering officer will be perfectly worthless, and the matter will have to be fought out in Court. I therefore think it will be better and sufficient as regards these matters to enact only that written contracts shall be registered, which is a very great protection. I do not mean to say that it is absolute protection, because nothing is an absolute protection. You have for instance cases of false personation of the raiyat, though that is rare. There are no laws under which it is not possible to commit fraud if a man is willing to go in for perjury, conspiracy, forgery and false personation. If such things are resorted to, they are occasionally successful, but what really and in all ordinary cases prevents the commission of such acts is the strong arm of the criminal law and the heavy sentence of transportation for life. I object to all these extra processes of registration. If a pattá is in the ordinary form and does not disclose the fact that it enhances the rent, are we prepared to declare it to be void or not? If not, that is a fatal objection to the whole scheme of special registration.

"These are the general objections which I have to the section, and I think they may all be met just as well by something else as by the amendment which I have put on the paper. My amendment is no doubt apparently defective in that it does not contain any provision with regard to part-performance, but the practical result will be much the same. If the Government of India is disposed to meet the point with regard to unwritten engagements being admitted on proof of part-performance, that would be sufficient. And with regard to written engagements, by not providing any particular form in which they must be made and making the fifteen years' term a mere statutory provision for enhancement, it will be found to work better, and it will meet my general objections to the section.

"There remain only a few remarks which I have to make upon the particular question contained in clause (*a*) as to the restriction upon enhancement, namely, that it shall not be more than two annas on the rupee. I have already said so much about it in the general observations I have made when the motion for the consideration of the Bill was before the Council that I do not propose to add very much to what I then said. I pointed out that there are two or three classes of cases in which it will be impossible to impose such a limit of enhancement in defiance of justice and common sense. There are certain well-known cases in which it is inexpedient at any rate that a limit should be imposed. Whether the enhancement is merely on the ground of rise of prices, and where there has been an enhancement within the last 10 years, I do not believe that enhancement of more than two annas in the

rupee could be got, and I think two annas may represent what is ordinarily obtained in such cases; but there is a very large class of raiyats who are allowed to sit on land on low rates in consideration of cultivating a particular kind of crop, and the landlord ought to be able to say to them 'If I cease to make you cultivate this particular kind of crop, what would you give for the land?' and we know that in such cases enhancements of 50 and 100 per cent. and more are common. The zamíndár, sooner than fight a large body of raiyats and incur the large expenses incidental to legal proceedings, will in many cases take one-half of what he would be entitled to if he took the raiyat into Court; and if an enhancement of 25 per cent. instead of 12½ per cent. were agreed to between the parties, what would be the necessity of compelling the landlord to sue? Under this clause the zamíndár must put them into Court. The raiyats will come in and say 'You are our father and mother and take an enhancement of 25 per cent.'; he will say 'I cannot do so under the law, but you may enter a consent decree for 25 per cent. with costs.' There are large numbers of raiyats who have for some reason or other been allowed to sit at low rates and are legally liable to an enhancement of more than 12½ per cent. besides the special classes I have mentioned, and it is unreasonable to prevent their settling with their landlord out of Court. I feel certain that it will be better to strike out the two annas limit and to leave the parties to settle among themselves. The self-interest of the raiyats might be trusted to prevent their giving any more than they think the zamíndár will get. But when the raiyat has come to the conclusion that he will lose his suit and the zamíndár will get large enhancement, is it wise to prevent him compounding the matter for a comparatively small enhancement? I know it is strongly argued that the raiyáts are in need of protection, and I have said what I had to say on that subject on the last occasion. The raiyats, as we have seen, have the power to combine together and fight their landlord, and in many cases they will do so when they see a chance of success. But when they see that their neighbours have failed they will say 'The Courts are very expensive and uncertain, and we will give an agreement sooner than take the risk', and it is their interest to do so; but you say 'You shall not do this; it is better for you to go to Court'. Is the Council quite certain that it is a better judge of what is best for the raiyat—as to whether he should go into Court or not—than the raiyat himself? I think as regards that matter the raiyat is really the best judge. While I would seek to protect the raiyat in every way which is for his benefit, I would decline to put in something which, though it is intended for his protection, will work more mischief than it does good, and will not as a matter of fact prove to his advantage. If the Council will not come to the conclusion to omit the 12½ per cent. limitation upon enhancement, I certainly will ask that some provision may be made for some of those cases in which raiyats hold at specially low rates in consideration of cultivating particular crops."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said that, after the eloquent speech of the learned and Hon'ble Mr. Evans in support of the motion, he had very little to say in support of it. The provision for a registration of engagement, which provided for the payment of enhanced rent would be a very great hardship upon the raiyats themselves. Their trouble and expense and the hindrance of their daily avocations would not be the least of these inconveniences. One should have supposed that in a matter like this the Council would be guided in the direction in which the present law had been found by judicial decisions to be effective. But he could challenge hon'ble members present to point to any judicial ruling saying that the absence of the provisions like those contained in sections 28 and 29 had led to hardships. On the contrary, the ruling at present supported the view which had been so eloquently maintained by the hon'ble member. He would read a decision given by Justices White and Maclean in a case in which the zamíndár was allowed to give evidence of a verbal agreement to pay enhanced rent on the part of the raiyat. The following was the opinion:—

"A verbal agreement was proved in the Lower Court to have been made between the defendant and the lady's agent, and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent. The Lower Appellate Court has treated this document as a lease, or agreement for a lease, and consequently held that he was not at liberty to admit the verbal evidence which was produced in the first Court. I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered."

The Hon'ble MR. MANDLIK said that the question now brought before the Council by the Hon'ble Mr. Evans was one of two conflicting principles. If ample security was provided to the raiyats by means of registered contracts, a great deal of litigation could be avoided. While he was so far in favour of the amendment, he could not discuss the new provisions properly until they were duly brought before the Council in writing.

The Hon'ble MR. REYNOLDS said that this was one of the most difficult questions with which the Select Committee had to deal, as on the one side there was no object to be gained in driving the parties into Court, and it was very desirable that they should be left to make their own arrangements; and on the other hand there was a mass of evidence to show that if no restrictions were put upon contracts out of Court, there was hardly anything to which a raiyat could not be got to agree. A number of instances had been given in the papers before the Council from which it was clear that the raiyat could not be considered a free agent in making a contract with his landlord, and that if he signed the agreement he did not really know what he was about. For these reasons the Select Committee had decided that no enhancement out of Court should be legal unless agreed to by a registered contract that the rent must not be enhanced so as to exceed two annas in the rupee, and that the period must be fixed at 15 years. The Hon'ble MR. EVANS considered that such a rule would lead to difficulties both with regard to raiyats who had no written engagements: and to those who had such engage-

ments and that there were certain classes of cases in which the two annas limit would be unreasonable, especially cases in which raiyats held at low rents in consideration of their cultivating particular crops.

With regard to this point MR. REYNOLDS might refer to the report of the Bihár Rent Commission. The members of that Committee were practical men, who must have been fully conscious of the objections which might be urged against their proposals: but they were unanimous in recommending that no enhancement out of Court should be allowed except under a registered contract. A similar provision existed in the present law in the North-Western Provinces. Under section 12 of Act XII of 1881, there could be no enhancement except under a registered contract, or by suit in Court, or by order of a Settlement-officer. He thought that when these facts were taken into consideration it could not fairly be said that the provision for requiring registered contracts would present insuperable practical difficulties.

Then, as to the form of the contracts, MR. REYNOLDS was not sure that he had understood the hon'ble member's objections on the subject of registration. It was not contemplated, in MR. REYNOLDS' opinion, that there should be anything which could be called special registration, or that the registering officer should be bound to make any detailed enquiries. It was only intended that the registrar should satisfy himself that the contract was in accordance with certain plain provisions of the Act, and that the raiyat understood the terms of the contract, and entered into it as a free agent. But MR. REYNOLDS would offer no objection to the striking out of sub-sections (2) and (4) of section 29 if it were thought that this would simplify the proceedings.

The hon'ble member went on to refer to the two annas limit, and he remarked that this limit would operate unfairly in certain classes of cases, and that it would be better to allow 25 per cent. out of Court than to drive the parties into Court. MR. REYNOLDS believed, on the other hand, that there was great danger in legalizing large enhancements out of Court. If the landlord wanted a greater enhancement than two annas in the rupee, he ought to be required to submit his claim to the decision of a Court. If there was a practical difficulty in any case, it would be in regard to the cultivation of particular crops and in regard to this MR. REYNOLDS thought it would be enough to make special provision for cases of existing contracts under which raiyats might be holding at specially low rates in consideration of their cultivating particular crop. The provision need not extend beyond existing contracts, because in future it would be in the landlord's power to let the land at the full rate, and to grant a reduction so long as the particular crop was grown.

Then, reference had been made to what were called amicable agreements, where no written contract existed at all; and it was proposed to recognize these as binding if they were supported by proof of part-performance. MR. REYNOLDS thought that such a provision would go far to diminish the value of the section altogether, and would allow enhancements to almost any extent out of Court. He believed that the proposals of the hon'ble member, even with the modification which he understood him to be ready to make, would have a very injurious effect on the section relating to enhancements and on the controlling power which it was intended to exercise in the matter of enhancements out of Court. If hon'ble members doubted whether the section if passed into law in the form in which it came before the Council at present, would meet all the circumstances of the case, he would ask them to remember that it might be amended hereafter, and he urged that for the present it would be better to allow the section to stand as it was, and to maintain the principle, which had been already enforced in the North-Western Provinces, and which was recommended by the Bihár Committee, that the rent of the occupancy-raiyat should not be enhanced except by a registered contract or a suit in Court. If the arguments on both sides were taken into account, he believed that there was far more danger in such an amendment as had been suggested than there was in leaving the section as it stood. He therefore hoped the amendment would not be accepted.

The Hon'ble MR. AMÍR ALÍ said that he was opposed to the amendment proposed on the grounds which he had already pointed out in his remarks on Monday last. The two-anna limit was a necessary one. The raiyat can hardly be supposed in the majority of cases to be in a position to hold his own against the zamíndárí influence. In many places the demand for land was so great that the raiyats were anxious to agree to any terms; and whether they were able to pay the enhanced rents or not, it was enough for the zamíndárs to show a high rental on the village-papers. If the two-anna limit would drive the parties into Court, then, he would contend, that the four-anna limit on enhancements in Court should be restored. As regards the objection on the ground of the difficulty of registration, that seemed to him to apply to all cases of registration. Part-payments should not be presumed to be a proof of an agreement; for that would simply leave the matter where it now was.

The Hon'ble MR. GIBBON said:—"I must say I concur in all the arguments which have been brought forward by the Hon'ble Mr. Evans in condemnation of the section as it stands in the Bill, but I go further. I disapprove altogether of the policy of restricting amicable settlement of the rents or of laying down the conditions or terms under which landlords and tenants shall be compelled to come to an amicable settlement amongst themselves. The Hon'ble Mr. Reynolds has quoted the proceedings of the Bihár Rent Commission with approval. I was a member of the Bihár Commission and concurred in the findings of the Commission, but on a reference to the proceedings of the Committee it will be found that they never attempted to lay down the terms or conditions under which landlords should come to a settlement with their tenants. They had simply declared that the mutual arrangements to be come to between landlord and tenants should be in writing and registered, and I maintain that that is the correct solution of the question and the one which should be arrived at by this Hon'ble Council. The

framers of this Bill have taken away the present procedure of issuing notices of enhancement through the Court, which is a cheap and easy process for bringing pressure to bear on the tenants to enhance their rents. It is therefore no longer necessary to place such restriction on amicable settlements as is now being provided under the Bill. The whole purport of this portion of the Bill is to force the landlords and tenants into the Court. If parties are to be forced to settle their affairs through the Courts, they should be settled free of expense. This I deem to be an impossibility. Why put parties to the expense of going to the Court when they do not wish to go there? The restrictions imposed by the Bill are useless, obstructive and unnecessary, and can and will be evaded by the bad men among the landlords. Take for instance an application under section 158. If a landlord applies to have the rents, terms and conditions of a holding declared, and the tenant elects to declare that he is holding at an enhanced rent, what Court in the world would declare that his proper rent is a lower one? It can also be evaded by an amicable suit. I may be allowed to say that I equally object to the amendments of the Hon'ble Mr. Evans. The true solution of the difficulty is, as proposed by the Bihár Commission, that whatever agreement is come to should be in writing and registered, be the conditions what they may."

His Honour THE LIEUTENANT-GOVERNOR said that he was bound to recognise the temperate spirit in which his hon'ble and learned friend Mr. Evans had brought forward proposals on which evidently he felt very strongly. The hon'ble member had placed before them arguments against written contracts and the registration of such contracts and the particular limitation of enhancements out of Court with all the legal force and acumen, with which, as they all knew, he was so well accustomed to plead in Courts, and HIS HONOUR did not at all under value the force of his logic. But HIS HONOUR could not agree in all that had fallen from the hon'ble member on these points. He understood the hon'ble member to say that it would be practically impossible to enforce the limitations of enhancement out of Court to two annas in the rupee, and he apparently wished to maintain that parties should be left to make their own arrangements without any such interference on the part of the law.

That kind of argument might be reasonable enough in England, where parties to contracts in such dealings met on something like an equal footing, and might be left to look after their own interests: but he thought it was asking the Council too much to believe that parties here in India were at all in an equal position. All the facts were against that supposition. The Hon'ble Mr. Reynolds had given an accurate statement of the case, and, if there was any necessity to add evidence in support of his contention, HIS HONOUR could adduce a great deal in support of the fact that in matters of this kind the raiyat was placed every day at a great disadvantage and was justified in claiming protection from the law. From the evidence taken in the Bihár Commission, it was found tha the raiyat might be regarded in the position of a "minor," that is, of one who could not be left to his own intelligence to enter into a contract. If there was one principle more than another upon which the Council had been agreed from the very commencement of this legislation, it was that a proved necessity existed for imposing a limit upon the zamíndár's demand. The raiyat was not a free agent, and from documents produced in this Council last year it was shown that he was constantly compelled to sign agreements which would have been incredible if the papers themselves had not been produced. What was true of Bihár in this repect was notorious from the cases which had come up from Maimansingh, the 24-Parganas, and in fact from all parts of the country. It must always be borne in mind that in the Bill as it had been drafted the limitations of enhancement out of Court in no way deprive the landlord of his right to get a higher rent if he was justly entitled to it. In enhancements by suit no limitation had been imposed; and if the zamíndár had grounds for thinking that he should get more by way of enhancement than two annas in the rupee or 12½ per cent. upon the existing rent, let him take the case to Court, where there would be the assurance that the facts on both sides would be fully examined and a decision passed after the sifting of all the evidence. Even the hon'ble member (Mr. Evans) admitted that a 12½ per cent. enhancement was a reasonable increase, and his plea was only for exceptional cases. But such hard cases might be otherwise provided for without infringing the principle, upon which section 29 was based, that where there is not guarantee of fair dealing which the control of the judicial Court afforded, some positive check must be put upon excessive enhancements out of Court. HIS HONOUR therefore considered some such provision as this was absolutely necessary to regulate enhancements, and that it should form part of the Bill.

The Hon'ble SIR STEUART BAYLEY said:—"It is with great regret that I have even in appearance to oppose the motion of the hon'ble gentleman opposite. In all the multitudinous points that have come before us in Committee it has been my good fortune almost invariably to find that there was a substantial agreement between us; and even on this question I trust it will be found that our divergence is more apparent than real, or at all events that the alterations I am prepared to make will go a long way to reconcile my learned friend to these clauses. The section is, in the opinion of some, one of the most important in the Bill. This view, for the reasons given in my opening speech, I am unable to share, as I think the effect of the section must be more indirect than direct. But if not one of the most important, it is certainly one of the most debateable sections, and one about which I have had extreme difficulty in making up my own mind—a difficulty by no means lessened by the very divergent views we have heard expressed on the subject in debate.

"To turn now to the actual objections taken by the hon'ble member. These I find to be partly to the form and partly to the substance of the section. So far as they refer to the form, I could wish that they had been brought forward at an earlier stage in order that I might have consulted with him at leisure as to the best way of meeting them. He objects to

the form, if I understand rightly, because the section involves a special system of registration, and the specification of certain conditions in the deed; and therefore a deed of enhancement which has been registered in the ordinary way, and which fails to specify these conditions, as for instance that it is to be in force for 15 years, is invalid, and it is doubtful even if rent collected under such a deed would not be an illegal exaction. Well! on these points I am quite prepared to alter the section so as to meet his objections. The fact is that the clauses which provide for comparison and examination by the registering officer are a survival of the section of the original Bill which provided for the approval of these contracts by a Revenue-officer. It was the intention under the Bill as it now stands that they should be registered in the ordinary way by ordinary agency, but in view of the objections pointed out by my hon'ble friend to the retention of the special conditions and form of registration, I am glad to adopt the suggestion of Mr. Reynolds that the sub-sections providing for these should be abandoned.

"Next I come to an objection which is one rather of substance than of form, though it partakes of both characters. It is directed against the provision that all enhancements by contract must be in writing. The objection is that as a matter of fact in nine cases out of ten such contracts are not reduced to writing, still less they are registered, and if they are written they rarely refer to the old rent, but generally take the shape of a fresh pattá for a specified term of years. The hon'ble member very justly urges the impossibility of changing the immemorial custom of oral contracts by a stroke of the pen, and points out that the effect of the law will be that a raiyat having orally agreed to pay an enhanced rent, and having given practical effect to the agreement, may at any future time—ten, fifteen or twenty years hence—turn round and, by showing that the rent in 1884 was so much, effectually meet his landlord's claim for arrears, because the latter cannot produce a registered contract enhancing the rent subsequent to 1884, and the raiyat might even possibly sue him successfully for illegal exactions.

"I cannot deny the force of these objections. I had myself supposed that while this section would effectually bar a suit for enhanced rent, if not based on a registered contract, it would not have the effect of overruling the general presumption that existing rents are fair and equitable, and that the Courts in the case supposed, finding satisfactory evidence of a rent having been paid for a number of years, would presume that rent to be fair and equitable, and would not go back to enquire what the rent was in 1884; but I am informed authoritatively that Mr. Evans' construction of the Bill as it stands is correct, and that the effect would be as he supposes.

"Now the Government and the Select Committee do undoubtedly attach immense importance to getting these contracts reduced to writing and registered. I do not deny the difficulty, but I feel that if this difficulty can be overcome, not only will all rent litigation be reduced in quantity and simplified in quality to an incalculable extent, but the educational effect in enabling the raiyat to understand and maintain his rights will be enormous. For my own part I attach more weight to this educational or indirect effect of the section—a great deal—than I do to its direct effect. For these reasons I fully sympathise with the Government of Bengal in their desire to give special prominence to the principle that all contracts for enhanced rent rent should be in writing and registered. But in asserting this principle I do not think we should overlook the disturbing and immoral effect of allowing the raiyat to repudiate years hence the oral contract which he has accepted and carried out regularly and continuously. My hon'ble friend Mr. Reynolds has pointed out that in the North-Western Provinces a raiyat's rent can be enhanced by agreement, only if that agreement is written and registered. This is true, but the registration in the North-Western Provinces is carried out by the establishment which is specially organised for recording and registering the rights of every raiyat in the country. The enhanced rent would in any case have to be recorded in the Government registers kept by this establishment of village accountants, and it involves but little more trouble to have the agreement itself registered by the same machinery. In Bengal we are, most unfortunately, destitute of this machinery. We have no patwáris save in Bihár, and there we have only a very demoralised kind of patwári, unchecked and unsupervised by the kánúngo who safeguards the institution in the North-Western Provinces. The conditions therefore are essentially different, and no analogy can be drawn between the facilities which exist for the registration of such contracts in the neighbouring province and the difficulties which must attend it in Bengal; nor do I think this argument justifies us in refusing to provide a remedy for the very serious objections which Mr. Evans has pointed out to the effect of the section as it stands. The remedy should, I think, be sought in the direction indicated by the hon'ble gentleman in his speech, namely, that where an oral contract has been given effect to by the continuous payment of the enhanced rent for a certain number of years, this performance should have the effect of validating the contract, and I would adopt the analogy of the rule in the case of the 'prevailing rate' and fix the term of three continuous years during which the rent has been actually paid as sufficient performance to validate the contract in the place of registration.

"Turning now to the substantive objection which the hon'ble and learned member opposite has taken to the essential point of the section, that the rent shall only be enhanced by contract to the extent of two annas in the rupee above the previous rent, I need not repeat at length what I said in my opening speech. I pointed out then that the limitation was so easily nullified by a false recital, that if the rent was once accepted by the raiyat, the limitation would be no bar to an unscrupulous landlord; and I admitted that in cases where a landlord after succeeding in a test-suit might get his raiyats generally to agree to pay the rent decreed in that suit, it would be injurious to all parties to prevent such an agreement being made and

to force the landlord to bring each raiyat separately into Court to confess judgment. But, on the other hand, you have heard what vital importance the Government of Bengal attach to the retention of this clause, especially as a safeguard in those parts of the country where the raiyat's rent is already too high and where his position is so weak that he can be induced to agree to any terms his landlord may impose on him; and in the face of the urgent advocacy of the Government of Bengal I cannot recommend that this limitations hould be dispensed with. There remain the speciai cases referred to by Mr. Evans where an unduly low rent is paid in consideration of a special crop being grown. I think it essential to except these cases from the general rule, and I am prepared to introduce a clause to this effect. If therefore the hon'ble gentleman is willing to withdraw his amendment, I will move that section 29 of the Bill shall run as follows:—

'The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

'(*a*) the contract must be in writing and registered;

'(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

'(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows:—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

'(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.' "

The Hon'ble Mr. Evans said he had heard with much pleasure the views of the hon'ble member in charge of the Bill, and he thought that there was substantially very little difference of opinion between him and the hon'ble member even as to the two-anna limit, save that he utterly disapproved of it, while the hon'ble member merely entertained doubts on it. He would therefore withdraw his amendment on the terms proposed by the hon'ble member in charge of the Bill; but on the distinct understanding that he did not abandon his opposition to the limit on enhancement out of Court as useless and pernicious. He would not have withdrawn his amendment so far as it concerned this point had not the Mahárájá of Durbhunga been about to move a special amendment for striking out this clause.

The Hon'ble the Mahárájá of Durbhunga moved that clause (*a*) of sub-section (1) of section 29 be omitted.

The Hon'ble Mr. Evans remarked that this was the amendment he referred to and he had said all he wished to sav on the subject. He should strongly support the amendment.

The Hon'ble Bábú Peári Mohan Mukerji said:—" I have the honour to support the amendment moved by the Hon'ble the Mahárájá of Durbhunga. Both the Rent Commission and the Government of India took the position that Government had the right of determining the rates of rent payable by tenants to their landlords. The Rent Commission observed in paragraph 44 of their report:—

'Government never intended in 1793 to abdicate the function of determining the proportion of produce payable by the raiyat, a function cast upon them by the ancient law of the country.

and the Government of India stated in their despatch to the Secretary of State, dated the 21st of March, 1882:—

'In his well-known minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamíndárs had never been denied or disputed.'

" But Lord Cornwallis never said such a thing. The position taken by the Government of India was not only disputed, but had been conclusively disproved by the landholders. His Honour the Lieutenant-Governor apologetically quoted yesterday extracts from contemporary State literature in support of the alleged right of Government to determine rates of rent, but there was no need of any apology for his quotations. I shall presently show that contemporary State literature left no doubt whatever on the question, but before so doing I wish that it should be borne in mind that there were two parties in connexion with the proposal for a permanent settlement of the land-revenue, one for it and one against it, and that no point could be established by referring to the vaccilating opinions of the parties expressed before the settlement was made. The reference, for instance, made by His Honour to the opinions of Warren Hastings was most unfortunate. All know that his conduct towards the landholders in having deprived them of their estates and let them out in farms evoked a severe censure from the Court of Directors, that it formed one of the grounds of his impeachment before the House of Commons, and a Parliamentary Statute, 24 George III, cap. 24, was passed, among other purposes, for the object of undoing the acts of Warren Hastings in this respect, and restoring their estates to the landholders after due enquiry. A correct insight into the nature and effects of the Permanent Settlement can be got only from the Regulations themselves and from the

writings of Lord Cornwallis and of Sir John Shore, who, after a most searching and careful inquiry into the rights of landholders and tenants, came to the conclusions recorded in their minutes. The settlement was not an idea suddenly conceived and forthwith put into execution. For years before it was actually made there was an elaborate enquiry into the nature of the status and rights of zamíndárs and of their raiyats, and the conclusion to which the Government came was that 'the regulation of the rents of the raiyats is properly a transaction between the zamíndár and his tenant and not of the Government'—Shore's minute dated 18th September, 1789. In another part of the same minute he said :—

'The Institutes of Akbar show that the relative proportions of the produce settled between the cultivator and the Government; yet in Bengal I can find no instance of Government regulating these proportions.'

"The rent which the zamíndárs received from their raiyats was the pargana or established rent. It was nothing more or less than the highest competition-rent. This is proved beyond all doubt by the minute of Lord Cornwallis, which was quoted by the Government of India in their despatch to the Secretary of State. His Lordship said :—

'Whoever cultivates the land, the zamíndár can receive no more than the established rent, which in most cases is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.'

"Again, the Preamble of Regulation II of 1793 showed that Government left 'it to the people themselves to distribute the portion payable by individuals,' and that 'Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.' The hon'ble mover of the Bill observed, on the occasion when the Bill was introduced, that the right of Government to interfere in the matter of determination of the rents payable by raiyats was clearly recognized by the Marquis of Hastings, and the hon'ble member gave to the Council extracts from His Lordship's minutes in support of his view; but, although the Marquis of Hastings was no friend of the zamíndárí settlement, the opinion he formed of that settlement after he had been in the country for a number of years varied considerably from the opinion which the hon'ble member communicated to the Council. I shall read to your Lordship an extract from the writings of the Marquis of Hastings contained in Bengal Revenue Selections, Volume III, page 340.

'The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the sadr málguzár, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest, and which may have been held and managed by such málguzár, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the sadr málguzár, were thus to be regarded as the full property of such málguzár, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the zamíndárs in unclaimed waste lands lying within the limits of their mahál.'

"The question was again discussed in 1827 in connexion with Mr. Harington's 'Bill for maintaining the rights of khúdkhást, chupperbund and other resident raiyats.' I think it necessary to read the opinion upon it by Mr. Ross, one of the Judges of the then Sadr Court.

'The clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an istimrári right upon every resident raiyat who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period—a construction which could not fail to be productive of injustice to the zamíndárs, by encouraging their raiyats to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.'

"And, as regards the rights of resident raiyats generally, Mr. Ross made the following valuable observations :—

'That all resident raiyats are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable: such a right is not claimed, I believe, by mere raiyats, whether resident or non-resident, in the Upper Provinces; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country.'

"The question before the Council was fully discussed, and I hope finally settled, by a Select Committee of the House of Commons in 1832. A large number of gentlemen who occupied eminent positions in the service of the Government of India or who had retired from that service, men like John Kay, Holt Mackenzie, James Mill and a host of others, were examined, the whole field of State literature was ransacked, and the conclusion to which they came was that—

'Unless the Government should, either by public or private purchase, acquire the zamíndárí tenure, it would under the existing Regulations, be deemed a breach of faith, without the consent of the zamíndárs, to interfere directly between the zamíndárs and the raiyats for the purpose of fixing the amount of land-tax demandable from the latter under the settlement of 1792-93.'

"It is for Your Lordship and this Hon'ble Council to determine whether in the face of such authoritative opinions, the distinct disclaimer of the right to interfere contained in the Regulations, and of the conclusions arrived at by the paramount authority in the realm, a limitation to enhancement of rent of the nature contained in the Bill is at all warrantable.

"The question might be considered in another aspect. It appears from Sir John Shore's minute, dated the 8th of December, 1789, that the rates of rent which obtained at the time of the Permanent Settlement ranged from half to three-fifths of the value of the produce of the land. This statement is confirmed by the fifth report of the House of Commons, and I find from copies of settlement papers of 1783, obtained from the Collector's Office of the 24-

Parganas, that the rates of rent per bíghá of land are variously stated at Rs. 2-10, Rs. 2-13, Rs. 2-14, Rs. 3-3, and so forth. The highest rents which obtain at present in the 24-Parganas barely show an increase of 50 per cent. over the rents which obtained in 1783. Considering that the prices of produce have trebled and quadrupled during this interval, it is clear that the zamíndárs have used with the greatest moderation their powers as to settlement of rent, and that the rates which obtain at present are far below the rates which they are entitled to get. A limitation like the one in question would therefore deprive them of their just dues, although they have hitherto exercised their powers with laudable moderation, and the tenants are very far from being rack-rented, the undisputed fact being that the rates of rent vary from one-twentieth to one-third of the value of produce in these provinces.

"The injustice of the limitation is also clear from the fact that the re-settlements annually made by the Bengal Government in their khás maháls and temporarily-settled estates show that the rates of increase are much greater than two annas in the rupee. I find that in 1883-84 the re-settlements show an increase of Rs. 24,210 over Rs. 88,799 or 4½ annas in the rupee; in 1882-83 an increase of Rs. 31,968 over Rs. 92,021, or 5½ annas in the rupee; in 1880-81 an increase of Rs. 1,31,805 over Rs. 2,84,682, or 7 annas in the rupee; and in 1879-80 an increase of Rs. 64,504 over Rs. 1,72,804, or 6 annas in the rupee. I do not for a moment wish this Hon'ble Council to understand that the increases shown by these re-settlements were anything but fair and equitable: I have every reason to believe, on the contrary, that the enhancements of rent were very moderate.

"Looking at the economic aspect of the question, I wish hon'ble members will bear in mind that there is no pressure of population on land in these provinces. The total area of the different districts, including those of Orissa and excepting Nadiyá, Jalpáigori and Dárjíling, about which full information is not forthcoming, is 128,344 square miles, as shown by the returns submitted by the Board of Revenue; and I find from the Hon'ble Dr. Hunter's statistical accounts that the total cultivated area in these districts is 79,307 square miles, showing a difference of 49,037 square miles or somewhat more than one-fourth of the area of these provinces as still uncultivated. The effect of the limitation would, therefore, be to check the extension of cultivation, and lower, in an abstract sense, rents which are at present very low already. Low rents are neither good for the raiyats nor good for the country. Experience has everywhere shown that they act as a damper on the condition of the tenants and are a great drawback to their prosperity. Our own country has furnished instances of the fact. I shall read to this Hon'ble Council an extract from a paper connected with Dekkhan Raiyats' Relief Bill.—

'There is undeniable evidence in the report before us that the very improvements introduced under our rule such as fixity of tenures and lowering of assessments, have been the principal causes of the great destitution which the Commissioners have found to exist.'

"The history of the proposed limitation is also significant. The draft Bill of the Rent Commission contained no restriction whatever to freedom of contract in this respect and to enhancements out of Court. It found no place also in the Bill drafted by the Hon'ble Mr. Reynolds, the Bill which was submitted by the Bengal Government, and the Bill which was forwarded to Her Majesty's Secretary of State for his sanction. For the first time a limitation of six annas in the rupee was inserted in the Bill which was introduced in Council in March, 1883, and it was reduced to four annas in the rupee by the Select Committee last year. An attempt was made when the question came up in its turn to reduce the limitation to two annas in the rupee, but the motion was rejected by the majority of the Select Committee, the mover finding himself in the majority of one only. At a subsequent meeting the question was all of a sudden taken up, although it was not on the notice-paper, and the limitation was fixed at two annas in the rupee.

"I shall conclude by noticing one or two observations which have fallen from hon'ble members. In expressing his intention of moving that the restriction to enhancement of rent by suit in Court should not exceed four annas in the rupee, the Hon'ble Mr. Amír Alí has virtually condemned the two-anna limit by contract as unjust and inequitable. The remark made by more than one hon'ble member to the effect that the limitation in question would not check the acts of unscrupulous zamíndárs is an additional argument why the honest should not suffer by it. His Honour the Lieutenant-Governor has observed that the case would have been different if the legislature had to deal with a class of tenants better capable of understanding their rights and entering into sentient contracts than the Bengal raiyats; but I hope after Your Lordship has gained some experience of the country, and before Your Lordship leaves our shores, you will carry with you the conviction that in intelligence and in a thorough knowledge of their civil rights and duties, not less of their social and religious duties, the raiyats of Bengal and Bihár might compare favourably with their fellows in any other country."

The Hon'ble SIR STEUART BAYLEY said that he would answer very briefly. He would have to recall the attention of the Council to the question which was now before them, and which was really remote from the learned disquisition in which the hon'ble member had just been reviewing a number of various subjects, beginning with the iniquity of Warren Hastings and ending with the religious duties of the Bihár raiyats. The question before them was whether the clause limiting enhancement out of Court to two annas in the rupee should stand. In its practical aspect the question had already been debated on Mr. Evans' motion, and he had nothing more to say on this score. The Permanent Settlement had really nothing whatever to say to it, and he thought he might say that the Council had sufficiently satisfied itself before the second reading of the Bill that the authors of the Permanent Settlement were themselves

convinced of the right of the State to interfere to limit the raiyat's rent; that in limiting that irent to the pargana rate they did so interfere; that they expressly reserved their right to nterfere further if necessary, and whether they had done so or not no settlement could possibly so bind a subsequent Government as to take away from it the inherent right to fulfil its primary duty of giving protection to the main body of its subjects. He would only further say that he must oppose the motion.

The Hon'ble MR. REYNOLDS remarked that he had no wish to detain the Council, but could only say again that the clause was one which the Government of Bengal had decided to adopt, and to which they attached great importance, and it was one of the few safeguards left in the Bill against undue enhancements. He did not think the Council should agree to strike out clause.

The amendment being put, the Council divided :—

| *Ayes.* | *Noes.* |
|---|---|
| The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga. | The Hon'ble J. W. Quinton. |
| The Hon'ble G. H. P. Evans. | The Hon'ble H. St. A. Goodrich. |
| The Hon'ble Peári Mohan Mukerji. | The Hon'ble H. J. Reynolds. |
| The Hon'ble T. M. Gibbon. | The Hon'ble W. W. Hunter. |
| | The Hon'ble T. C. Hope. |
| | The Hon'ble Sir S. C. Bayley. |
| | The Hon'ble C. P. Ilbert. |
| | Lieutenant-General the Hon'ble T. F. Wilson. |
| | The Hon'ble J. Gibbs. |
| | His Excellency the Commander-in-Chief. |
| | His Honour the Lieutenant-Governor. |

So the amendment was negatived.

The Council adjourned to Friday, the 6th March, 1885.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 6th March, 1885.*

## BENGAL TENANCY BILL.

The debate on this Bill was resumed this day.

The Hon'ble MR. AMÍR ALÍ said :—" Whatever I had to say on the subject of fixing a gross produce limit upon enhancements of rents I have already stated in the general observations I offered the other day on the Bill, and I do not therefore propose to take up the time of the Council by referring to those points again. But in view of the opinion entertained by the majority of the hon'ble members, as far as I have been able to gather them, I think it would be useless to bring forward the next amendment which stands against my name. I therefore desire leave to withdraw it. The amendment which I intended to have moved is to insert the following words in line 4 of clause (*a*) of sub-section (1) of section 24 :—

'or so as to entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops calculated at the price at which raiyats sell at harvest-time.' "

Leave was granted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that clause (*b*) of sub-section (1) of section 29 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" I have already submitted to the Council with reference to section 9 the arguments bearing on this question, and do not wish to address the Council on the present occasion. I need hardly say that I support the amendment."

The Hon'ble SIR STEUART BAYLEY said :—" The reason why we cannot accept this prop sal is obvious, that it will leave the raiyat liable to annual or quarterly enhancements by suit. It could scarcely be expected that the amendment could be accepted."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*b*) of sub-section (1) of section 29, for the word " fifteen " the word " ten " be substituted. He said :—" I have already submitted to this Council the arguments in support of my proposition that an enhancement of rent should obtain currency for 10 years and not 15. The rapid strides which the country is making in material progress make it desirable that the shorter minimum period should be adopted. If there is an actual rise in prices within 10 years, there is no reason why the landlord should not get enhanced rent on account of such rise of prices, and it would be a sufficient check against any oppressive suits if the landlord is restricted from bringing a suit after the rent has been once enhanced before the expiration of 10 years from the first enhancement."

The Hon'ble MR. QUINTON said :—" I oppose this amendment because it applies only to enhancement by contract and not to enhancement by suit. It appears to me that whatever term is fixed in the one case ought to be fixed in the other. As many enhancements will be by suit, I think it will be hard on the raiyat to fix a less period in such cases."

The Hon'ble MR. GIBBON said :—" As I am of opinion that all the terms and conditions of a voluntary contract should be left to the parties concerned, and that they should not be driven to Court, I am strongly of opinion that no term should be inserted in the Bill. Being of that opinion, I would prefer that all contracts, if there is to be a limit, should be for a shorter period even than 10 years. But as no such proposition is before the Council, I shall vote for the amendment."

The Hon'ble SIR STEUART BAYLEY said :—" The question between 10 and 15 years in regard to contracts is of course a question of degree. Having once settled that the rents of enhanced contracts are to run for a fixed period, it is a question of the balance of advantage. I do hope my hon'ble friend will consent to the necessity of fixing the same term for enhancements by contracts as for enhancement by suit."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" My amendment upon section 9 was lost simply on the argument that the same rule should obtain in the case of a tenure-holder as in the case of a raiyat; and as the Bill contains a provision to the effect that 15 years should be the minimum period in regard to the enhancement of rents of raiyats, the same period should be maintained as regards tenure-holders. Hon'ble members do not meet any of the other arguments advanced by me. With reference to the present amendment, the only argument urged by the hon'ble member in charge of the Bill is that the period must be the same as the period fixed for tenure-holders. None of the other arguments adduced by me have been met by any hon'ble member either on the present or the previous occasion. I submit this is simply arguing in a circle. Of course, the amendment rests on the vote of the Council, but I think it is a very striking fact that the previous amendment was lost because there is this provision in reference to raiyats, and this motion is objected to because there is a previous provision with reference to tenure-holders."

The Hon'ble SIR STEUART BAYLEY asked permission to explain. He said :—" The hon'ble member has quite misunderstood what I intended to say. I said that the section as to enhancement by contract ought to be the same as that for enhancement by suit. The real vote would then be taken on the section relating to enhancements by suit. I did not in the smallest degree intimate that the provisions of this section would depend on the provision relating to enhancements of the rents of tenure-holders."

The amendment was put and negatived.

His Excellency THE PRESIDENT said :—" We have now reached that stage in the Bill when it will be convenient for the hon'ble member in charge to introduce the modification we have agreed to as to the result of the discussion which took place yesterday."

The Hon'ble SIR STEUART BAYLEY said :—" I will now move the amendment which was agreed on the motion of the Hon'ble Mr. Evans in reference to section 29. I accordingly move that for section 29 the following be substituted :—

'29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

'(a) the contract must be in writing and registered;

'(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

'(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows :—

'(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

'(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.'"

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" I should wish, if it can be done, to consider this new section at the next meeting of the Council, or after the Council adjourns in the course of the day. I may perhaps have to propose a short amendment on one of the clauses of the proposed section."

The consideration of the proposed new section was postponed till after the adjournment for luncheon.

The Hon'ble MR. REYNOLDS moved that in section 30, for clause (a) the following clause be substituted :—

"(a) that the rate of rent paid by the raiyat is substantially below the prevailing rate, that is to say, substantially below the rate generally paid for not less than three years by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no reason for his holding at so low a rate."

He said :—" It is not the object of the amendment to re-open the question of the abolition of the prevailing rate as a ground of enhancement. That question has been decided by the Select Committee, who have justly remarked in their report that this is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or pre-

decessor. I submitted to the Committee an amended form of the section, which would, in my opinion, have provided a sufficient remedy, while guarding against that misuse of this ground of enhancement, of which such strong and concurrent testimony has reached us from various parts of the country. My proposal, however, was not favourably received, and I do not now desire to revive the discussion on the question of abolishing this ground of enhancement altogether. If I refer at all to the general question, it is only because I imagine that the Council will expect me to offer some explanation in reference to what fell from the Hon'ble Mr. Evans in connection with the Malinagor enhancement cases. I understood the hon'ble member to contend that the Bengal Government could not consistently advocate the abolition of this ground of enhancement while at the same time it was pressing the Courts to enhance the rents of its own tenants on this very ground. Now, I think it right to state that these cases were instituted in 1876, at a time when attention had not been called, as it has been called of late years, to this matter of the enhancement of rents. I don't think the head of the Government can fairly be taxed with inconsistency for advocating in 1885 the repeal of a law which one of his subordinates put in force in 1876. This ground of enhancement was the law then; it is the law now; and while it continues to be the law the Government is as much entitled to have recourse to it as any private zamíndár. Moreover, when the facts are looked at, I think this case affords a strong support to the position which the Government of Bengal has taken up regarding this question. What the Government has said is, that it is wrong in principle to enhance one raiyat's rent on the ground, not that it is too low in itself, but that other raiyats have agreed to pay more; that such enhancements are often productive of hardship; that no real prevailing rate can be found; and that, therefore, in 19 cases out of 20, landlords are tempted to fabricate a rate for the purposes of the suit. Now, here is a case in which a number of raiyats were paying not merely lower rents than their neighbours but rents altogether inadequate; the strict application of the law would have warranted an enhancement of (in some cases) 200 per cent., but just because the Government applied the law fairly, and did not attempt to manufacture a rate, the litigation has gone on for nine years, and matters are very much where they were when it began. I don't think there could be a stronger instance of the hopelessness of fairly applying this rule of enhancement. If the Government had established its claim it would have been a great hardship to the raiyats to have had their rents enhanced by so large an amount, but the Government has so far failed to make out its case because it has failed to show what the prevailing rate is. A plaintiff will almost always fail to show this unless he takes measures beforehand to establish, or, in other words, to manufacture, a rate, and accordingly that is the general means of proceeding in these cases. To use the forcible language of an acute and experienced Judge—'The prevailing rate is as a rule manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the Courts.' The landlord who attempts to work this ground of enhancement fairly will find himself involved in litigation as tedious and as unprofitable as these Malinagor suits have proved to the Government of Bengal.

"This, however, is somewhat foreign to the subject of my amendment, which merely aims at introducing a slight alteration in the wording of the Bill. The Select Committee have changed the language of the present law, and in some respects they have changed it very much for the better. But they have introduced a novel and most dangerous principle—the principle of ascertaining the prevailing rate by taking an average of existing rates. This, I think, is the interpretation which any Court would naturally put upon the words which direct the Court to have regard to the rates generally paid during a period of not less than three years. This is entirely opposed to the present law, as will be seen by a reference to the reported case of *Sumeera Khatoon*, I. W. R., p. 58, 31st August, 1864. In that case the Hon'ble Judges remanded the suit for a fresh trial and desired the lower Court to 'bear in mind that its adoption of the average rate from the different rates given by the several witnesses was an incorrect and unsafe mode of fixing the proper rate, and that the onus of proving what the proper rates are was on the plaintiff and not on the defendant.' If section 31 (*a*) of the Bill means anything, it means that the Court is to do what the High Court said was an incorrect and unsafe method to adopt.

"This doctrine of an average rate is not only illegal, but it is fraught with most mischievous consequences. I need hardly remind the Council that suits on the ground of the prevailing rate are entirely one-sided; they are always cases of levelling up, never of levelling down. The landlord may sue to enhance on the ground that a tenant's rent is below the prevailing rate, but the tenant cannot claim a reduction on the ground that he is paying more than the prevailing rate. If the principle of an average rate is once introduced, the inevitable result must be that all rents will be levelled up to the maximum. Suppose that there are three rates, at one rupee, two rupees and three rupees per bíghá. Under the present law the Court would perhaps decide that no rate was sufficiently established and general to be entitled to be called the prevailing rate. But under the wording of the Bill the Court would look at the rates generally paid; and it would almost certainly come to the conclusion that two rupees was the prevailing rate. This would be all very well if the rents of all the raiyats were thenceforth to be fixed at this rate. But the only result of the decision would be to knock out the one rupee rates. The two rupees and three rupees rates would remain. In the next suit, the Court would probably decide that the prevailing rate was two rupees eight annas, and thus each successive case would be a ground for a higher and a higher claim in the next. It may be said that, as a raiyat who has once been enhanced will be protected for fifteen years, the process will at any rate be a slow one. But this really affords no security. The landlord will institute one or two cases to get rid of the lowest rates. He cannot again enhance those

particular raiyats, but he can enhance all those whom he has not sued. He will sue different raiyats in successive years, and within the statutory period of fifteen years he will be able to bring all the rents in the village up to the highest level paid by any one.

"My amendment proposes to meet this by declaring that the Court shall look not to the rates but to the rate generally paid. This is entirely in accordance not only with the law as laid down by the High Court in the case I have already quoted, but with the wording of the old Regulations. Section 6 of Regulation V of 1812 declares that 'pattás shall be granted, and collections made, according to the rate payable for land of a similar description in the places adjacent.' The onus would lie on the plaintiff first to show the existence of a prevailing rate in the village, and secondly, to prove that the defendant was paying at a lower rate than this. I do not say that this would remove all the objections to the retention of this ground of enhancement in the law, but it would give the landlords all that the old law was intended to give them, and it would prevent that flagrant abuse of the law which seems likely to result from the present wording of the Bill."

The Hon'ble Mr. Quinton said that he would reply very briefly as to the reason for the vote he was about to give. He had been from the first opposed to the prevailing rate being a ground of enhancement, and if he thought the amendment of his hon'ble friend was merely confined to the removal of an inconvenience which would attend the working of the provisions for enhancing rent he would give him his hearty support. But the question was very fully considered by the Select Committee, and from what his hon'ble friend had said in his argument about the village rate, he (Mr. Quinton) had come to the conclusion that the amendment in its present form would almost entirely change the ground of enhancement as set forth in the Bill. He was opposed to the prevailing rate as a ground for enhancement, but he was still more opposed to putting in the Bill any provision which would in reality render it more objectionable as a ground of enhancement. On these grounds he must vote against the amendment. He would not give any reasons for his vote because he thought it was not desirable that the speeches of hon'ble members should cover the same ground as that which had already been taken by the hon'ble member in charge of the Bill.

The Hon'ble Mr. Evans said:—"With regard to the first point I think the hon'ble member has misunderstood the position as to the particular case I referred to and the effect of the observations I made on the last occasion. The suits brought against the raiyats in 1876 were for enhancement on all the grounds of enhancement, and they were finally thrown out in 1878 on the ground that the notices served by the Government were ambiguous and did not show properly the grounds on which enhancement was sought to be made. Then Government instituted fresh suits in 1881, I think, and what was remarkable was that the Government then abandoned the grounds of enhancement on which they had sued in the first instance, and rested their case entirely and solely on the ground of the prevailing rate; and the observations I made were intended to show that if it had not been possible to work the prevailing rate without creating fictitious rates of rent, it was strange that the Government officers should have been of opinion that the prevailing rate should be selected as the best of all the grounds which were taken before; and I also remarked that inasmuch as the cases were now being prosecuted in appeal by the present Government, I could not believe it was the opinion of the law officers of Government that none of these suits would succeed without the manufacture of fictitious rates. Therefore I thought that the persons who were acting on behalf of the Government in these cases must entertain a different view in regard to that matter. And with regard to these cases having been an inheritance from the former Government, that could be no defence, because the officers of Government were now contending in appeal before the High Court that they had made out their case, and were entitled to have these heavy enhancements decreed on the sole ground of the prevailing rate. I merely explain this to show that my observations have been misunderstood. Then we come to the statement of one of the Judges, who stated that it was customary to manufacture fictitious rates. That means that some people have resorted to the practice of taking kabúliyats containing nominal rates of rent which were not intended to be enforced and that they suborned raiyats to make documents by way of proof of a rate which was non-existent. This matter of manufacturing rates, of giving illusory evidence of this kind, was what led the Council to make it a direction that the Court should have regard to the rates paid for the last three years. As to manufacture of false evidence there is no class of cases in India in which false evidence is not constantly manufactured. The moment any law is passed, there are many persons who at once proceed to see how evidence can be manufactured to meet the requirements of the law. If this manufacture of false evidence were a good ground for repealing this part of the present rent law, it would be an equally good reason for repealing one-half of the laws we have made. With regard to the other matter of average rates, as long as we preserve the words of the present law 'the prevailing rate,' and not the average rate, the rulings of the High Court which prohibit the striking of an average, except to a very small extent in very special cases, would equally apply to the present section as settled by the Select Committee; and that there is nothing unfair in giving a direction that the Court should look to the prevailing rates will be apparent from the case in 5 W. R., page 70, in which the Court expressly said that the Judge must look to the rates prevailing at places adjacent. I do not think we have in reality in any way changed the law or the rulings on the subject of average. Say there are two rates, one of Rs. 5 and one of Rs. 2; merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think the class of judgments I have more than once referred to, in which the Judge says—'This man is found to be holding at Re. 1; the claim is to have his rent enhanced up to Rs. 2—on the ground of the prevailing rate, and there is a

great deal of contradictory evidence as to what the prevailing rate is; I doubt the evidence which makes it out to be Rs. 2, but I find that except in isolated cases land of this description is never held under Re. 1-8 therefore, I shall be safe in finding that the 'prevailing rate' is not less than Re. 1-8,—that is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so. Because it seems, according to Colebrook, that he, having found in 1811 that the pargana rates were in many cases undiscoverable, thought it would be wise to provide some rules with regard to such cases, and the rule having been made in the Regulations of 1812, gave rise to the provisions as to 'prevailing rate' in the Act of 1859. Under the expression 'the prevailing rate for similar lands held by similar classes of raiyats in places adjacent' the Courts have been able to give a certain amount of relief; and this ground of enhancement has, I think on the whole been found the most workable of the grounds provided in Act X of 1859.

"Then with regard to the actual amendment which has been brought forward by my hon'ble friend, I will point out that the great objection is this that it incorporates into the definition directions which the Select Committee propose to give to the Judges. Every lawyer knows that if into a definition of the ground on which enhancement is to take place you incorporate a number of things which the Court may have regard to, you make those things so positively a part of the definition, that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way without an enormous amount of expense and laborious investigation, and that there will hardly be a case which will not be capable of being upset by a special appeal to the High Court. It is not because I wish to change or widen the law that I think the draft, as it has been settled by the Select Committee, should remain. I should be sorry again to do what has been inadvertently done in Act X of 1859, that is, to offer to landholders grounds of enhancement which are unworkable; and if that is done again after the strongly expressed determination of the Government and of the Select Committee to make the grounds really workable, I think we shall be incurring a very grave responsibility, and that we shall find it very difficult to justify ourselves. We have in fact cut down the area from which we are to draw the comparison; we have cut it down to the village, and complaints are heard that we have cut it down too much, because as the law stands you may enhance the rent of a whole village by showing that the neighbouring zamíndár has succeeded in getting his villages to pay higher rents. Adjacent land, it has been held, need not be conterminous. Although the provision as it stands in the Bill somewhat restricts the power which the zamíndár at present possesses, we thought it well, on the whole, to cut it down, because it has been found that raiyats have now great difficulty in meeting suits for enhancement of rent on the ground of the prevailing rate, because the area for comparison is wide and vague, while zamíndárs find it difficult to know how much proof to give as the area is undetermined. But having cut down the area of comparison to the village itself, one does not like to insert words likely to increase the risk of its being unworkable. And that will be the effect of the proposed amendment. I am therefore obliged to oppose it."

The Hon'ble Mr. Hunter said:—"My Lord, I should like to say a few words on this subject, as I start from an opposite point of view from that which has been taken by the hon'ble mover of the amendment. I think the prevailing rate is in itself a good ground of enhancement. It is a ground which has always existed; and it has been continuously enforced in the management of estates since we entered the country. It is a ground which has been recognised by our early Regulations; and it was formally embodied in the law of 1859. It has been frequently urged upon the Select Committee to expunge that ground or to modify it in some way, so as to render it ineffectual. The Select Committee have taken precisely the opposite course. They have endeavoured to give reality to the old law in this as in other matters, and to render the prevailing rate an effective ground of enhancement where it can be equitably urged. I believe that the amendment now brought forward would have the effect of nullifying this ground of enhancement by rendering it very difficult to enforce it in the Courts. It would lead to the very abuses and fabrication of evidence which the hon'ble member who moved the amendment has so frequently and so eloquently deplored. I therefore think that if the prevailing rate is to remain at all, the Select Committee have done wisely in giving reality to it."

His Honour the Lieutenant-Governor said:—"I concur with my hon'ble friend the mover of the amendment. I think the amendment gives better security against fabrication and provides better safeguards against abuses than those which will prevail under the section as it stands. In putting forward this amendment we recognise the retention of the prevailing rate as one of the main grounds of enhancement, though I believe that whatever wording may be adopted, in the application of it you will find that it is practically unworkable, from the fact that it is totally impossible to prove in any part of the country the existence of a prevailing rate. It is defended on the ground of its antiquity; but if that is its main ground of defence, then there are a great many other things which we might have to fall back upon. One of these was that in the early days zamíndárs who did not pay the land-tax were immediately punished in person and kept in prison. The growth of information and experience has shown the way in which the prevailing rate is worked. The difficulty of establishing the existence of a prevailing rate has led to irregular and improper means to fabricate it. The resort to such measures is demoralizing to those who use it and unjust to the unfortunate raiyats. Wherever we have had local enquiries and anything like detailed investigation, the fact has come out that there is no such thing as a prevailing rate, and that the rates of rent in every

village were innumerable. This was the result of the personal enquiries held by Mr. Finucane, Mr. Tobin and Bábú Parbati Churn Rai upon this particular point in different districts; and I believe that if detailed enquiries were made elsewhere, you would find exactly the same results. I am glad to hear from my hon'ble friend Mr. Evans that he thinks the form of safeguard adopted by the Select Committee in the Bill will secure that the Courts do not take the average of numerous rates in the decision of suits under the section. It is only to make this point stand out clearer that the wording of the amendment which I would support has been suggested. The Courts have always held that the provision of the law as it stands should not be worked in the way of taking the average of many rates. The section by the amendment only gives emphatic support to this rule. With regard to the personal matter which has been brought against me with reference to the rent suits at Malinagor, I wish to say that, so far as regards the time when those suits were instituted in 1876 or 1878, the argument *ad hominem* which the hon'ble and learned member (Mr. Evans) directs against me, can have no application to me, because in those years I was employed in another and distant field of service, and had nothing to do with Bengal; but it is obvious that even if I had then been Lieutenant-Governor of these provinces, I could not possibly have interfered in the matter. The prevailing rate is a ground of enhancement in the existing law, and it was perfectly open to our Collectors and law officers to adopt it for enhancement, in particular cases. But beyond that, I would justify myself on the ground that a Lieutenant-Governor is not in a position to know what cases are going on in litigation between Government and others, and there may be hundreds of cases going on in different districts at the present moment in which the prevailing rate is being urged as a ground of enhancement. As my hon'ble friend, the mover of the amendment has observed, in the present state of the law, the Government has as much right as anybody else to appeal to the grounds which the law allows, though it may not be wise in doing so. It may be observed that even in the Malinagor suits it has not yet been proved that there is such a thing as a prevailing rate. The decision of the Judge was a very summary decision, and I understand that an appeal to the High Court has led to a call for the papers to ascertain whether there is such proof of a prevailing rate as to justify the finding of the District Judge. Therefore this particular case gives no support to the theory of a prevailing rate. As the principle of a prevailing rate however is to be retained in the Bill, the aim of the amendment is by providing an additional safeguard against its wrong use to prevent the recourse to an average rate, which the law never intended."

The Hon'ble Sir Steuart Bayley said:—"I think I should be grateful to the Government of Bengal that they have not opposed the ground of the prevailing rate altogether; they have however discredited it, by saying that it does not exist, and that there is no justification for it. I will not follow my hon'ble friend Mr. Reynolds in the exhaustive disquisition which he has given as to the reasons there were for supposing that the prevailing rate can never be found, but I will confine myself to the particular points which are before me. But I must first say one word with regard to the decision to which the Select Committee came not to abolish the ground of the prevailing rate generally. The main reason, as I explained before, was that in one shape or another it has been allowed as a ground of enhancement since the time of the Permanent Settlement; the pargana rate of which had been transmuted into the prevailing rate, and had in that shape been in the Statute-book since 1812. In that case I may fairly say it will be hard to remove the prevailing rate altogether, even if there were no other reasons for retaining it, and those who oppose it will have to show very strong reasons for doing so. But there is really a very sufficient reason why it should be retained, namely, that there are no other means by which the zamíndár can recover a just rate of rent from those raiyats who by reason of relationship to the *amlé*, or of caste, or by bribery, have been allowed to enter and hold at very insufficient rates. My own experience as to the management of wards' estates has convinced me that where gumáshtas have not been very closely looked after, they are in the habit of letting in their relations and friends at very low rates of rent, and the zamíndár has no means of remedying the results of the fraud or friendship either of a predecessor of his own or of his predecessor's agent or gumáshta; and it was for that reason that I voted with the majority of the Select Committee for the retention of the prevailing rate. I could not accept the suggestion to which my hon'ble friend Mr. Reynolds refers as having been made by him to the Committee because it threw on the zamíndár the impossible task of proving that fraud or favoritism attended the original letting to the raiyat, and the remedy would have been quite useless.

"I now come to the alteration proposed in the amendment, which at first sight seems a very little one. At first sight it merely uses the singular where we use the plural, but it also inserts as part of the definition what the Bill as it stands puts in as a guiding direction to the Court; and that makes all the difference in the world. In the one case the Court is bound by a hard-and-fast rule which, if the case fails to tally exactly with the definition of the prevailing rate, causes it to fall to the ground; in the other the directions are for the guidance of the Courts as to the steps they should take to ascertain the existence and reality of the ground taken for enhancement. That is my real objection to the amendment. The proposed amendment will not have the effect which anybody on first reading it will suppose it is intended to have. It is apparently intended to allow enhancement on the ground of the raiyat's rent being below what is the prevailing rate as it is now understood by the Courts. My hon'ble friend Mr. Evans has told us that the Courts are very rightly not allowed to make an average. But the amendment goes further than this. It comes to this, that if there is more than one rate, if everybody is not holding at the same rate, then the ground of a prevailing rate could in no case be at all maintained. If a zamíndár wants to enhance the rent of a

raiyat who holds at Re. 1-8 per bíghá, and shows that out of 24 other raiyats 14 pay at Rs. 4 and 10 at Rs. 3-8, the Court must, as I understand the amendment, reject the suit, because, as in such a case there is no one single and universally prevailing rate, no enhancement can be made. If that is the meaning of the amendment, it will not do what it purports to do; it proposes to give a ground of enhancement, and then takes it away; it is practically aimed at the abolition by a side wind of that ground of enhancement as now understood and worked by the Courts. For these reasons I prefer the section as it stands, and which, we are informed, is in accordance with the present law and the interpretation put upon it by the Courts, and we are told that, if the section remains as it is, the Courts will not work it upon the principle of an average.

"I ought also to mention to the Council that I received a paper this morning too late for circulation; it is a communication protesting against our limitation of the vicinity to 'the village'; at present it is the rate prevailing in places adjacent, and now we have, as my hon'ble friend Mr. Evans has explained, restricted it to the word 'village'. The paper is from Messrs. Thompson and Mylne, landholders of Sháhábád, gentlemen who, as everybody who knows the facts will acknowledge through a long career and by their excellent example as agriculturists in Bihár have earned the highest possible reputation both as progressive agriculturists and also as good landlords. These gentlemen object to our restricting the right of enhancement on the ground of the prevailing rate to the village, because they say it prevents a landholder who has allowed the rate to remain low in his own village from taking advantage of the more severe and stringent action of his neighbour in the neighbouring village. The answer to that has already been given by my hon'ble friend Mr. Evans, namely, that the point was carefully considered by the Committee. The grounds which led to the change which has been made are two—first, that a very wide interpretation was given by the Courts in recent cases to the words 'places adjacent', and in one case it has been interpreted to cover not the adjacent villages nor even the whole pargana, but the neighbouring parganas, which might be 30 or 40 miles off. It is perfectly clear that when you compare a raiyat's rent with rents paid in places at some distance you do him an injustice, because as long as you confine it to his own village he can prove what the rates are. But if you go outside his own village, the raiyat is quite unable to show what the rate there really is, and is at the mercy of the evidence brought by the other side. And from that point of view—and it was to a great extent accepted by the representatives of the zamíndárs—we came to the conclusion that it is on the whole fair to restrict the comparison of rates to the particular village. I make these observations, although no one has objected to the alteration which has been made by the Committee, because it is the only opportunity which I have had to refer to the objections which have been made by my highly-respected friends Messrs. Mylne and Thompson."

The Hon'ble MR. REYNOLDS said in reply:—"I purposely avoided referring to the general question. I did not attempt to argue in favour of the abolition of this ground of enhancement altogether. The charge brought against the amendment is that it would practically be depriving the landlord of this means of enhancement. If the general question is raised, I quite admit with the hon'ble member that this is the only means by which a landholder can remedy acts of fraud or favouritism of his agent or of his predecessor; but if that is the ground on which the hon'ble member defends his position, why does not he confine the operation of the section to cases of that kind? Then, with regard to the question as to the operation of the amendment in the case put by the hon'ble member, namely, that if one raiyat paid at Re. 1-8 per bíghá, and the rest some at Rs. 4 and some at Rs. 3-8, the section as proposed to be amended would prevent any enhancement at all, of course, a possible example can be put in reference to any proposal; but the object of the amendment is honestly to say that where there is no rate substantially established to be the prevailing rate, enhancement on the ground of the prevailing rate should not be allowed; and that I think is according to the existing law. If there is no prevailing rate a suit for enhancement on that ground ought to fail. But I would ask the hon'ble member to consider the hypothetical case I put, where 10 raiyats pay at Rs. 2, 10 at Rs. 3 and 10 at Rs. 4. I don't think that in such a case there should be any enhancement on the ground of the prevailing rate, because such a rate would not have been established. But the section as it stands would tend to the enhancement of all rents up to the maximum of Rs. 4, and that would not be in accordance with the principles of the present law."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ of DURBHUNGA by leave withdrew the amendment that for clause (*b*) of section 30 the following be substituted:—

"(*b*) that the value of the produce of the land has been increased otherwise than by the agency or at the expense of the raiyat."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*b* of section 30, for the words "staple food-crops" the words "the crop grown on the land" be substituted. He said:—"The use of the words 'staple food-crops' would give rise to this anomaly, that when the crop grown on the land had risen in value, the landlord would get no enhancement whatever if the price of the staple crops had not risen simultaneously; while, on the other hand, when the price of the staple crops had risen, and the price of the crop grown on the land had not risen or probably had declined, the raiyat would still have to pay enhanced rent, and at the same time have to spend more money in buying his food-grain. So that the provision would operate hardly both on the landlord and the raiyat; and with a view to prevent this anomaly I move this amendment, which I think is in conformity to the law as it exists at present."

The Hon'ble MR. GIBBON said :—"I certainly think my hon'ble friend has misunderstood the provisions of this section. The use of the term 'staple food-crops' is rather as a standard of value than as a means of enhancement; it is to be used for the purposes of adjustment. I think he has failed to see that the standard will affect the reduction of rents as well as their enhancement in the future. Any crop the price of which is dependent on its export value cannot be used as a standard of adjustment. If the amendment proposed be carried, it will infuse such an amount of uncertainty into our system as to become intolerable; it will become impossible to follow the fluctuations of the markets. Any commodity that is to be taken as a general standard of value for the adjustment of rents must be a commodity that is in general use among the people amongst whom it is grown; only such commodities can be regular in their prices. Staple food-crops vary little in their prices from year to year, whereas the value of indigo, tea, sugar and other crops dependent on their export value for their prices constantly fluctuate, and for some years past they have at least a downward tendency; the acceptance of such commodities as a standard might have the effect of reducing rents instead of enhancing them."

The Hon'ble SIR STEUART BAYLEY said :—"I explained in my opening speech what the intention of the Committee was. We took the staple food-crops as an index to prices generally. We deliberately rejected the idea of enhancing or reducing rates of rent according to the crop grown on the ground. If the hon'ble member will look at the result of the words he proposes, he will find when he comes to enhance rents he will have to ask the Court to compare the prices of crops grown to-day with the prices of crops grown 10 years ago. But he will first have to prove what the crop grown 10 years ago was. This he can never do. It is not the fact that the same crop is grown for 10 consecutive years. It is especially in the more highly priced crops that variations occur more frequently. But that is not my main objection. My real objection is one of principle, that the raiyat's rent ought not to be raised because he is a shrewd man and grows the crop which will pay him best; and similarly the landlord's rent should not be diminished because the raiyat is a foolish man and grows the crop of the least value. For working purposes we assume all rents to be at a fair and equitable rate. It will require no great acumen to see that if the rates are to be altered according to the crop it will be injurious both to the landlord and to the raiyat; and if the raiyat is to be taxed for growing more expensive and remunerative crops it will in the aggregate work more harm to the zamíndár than even to the raiyat."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that for clause (*b*) of section 30 the following be substituted :—

"that the net value of the produce has been increased otherwise than by the agency or at the expense of the landlord."

He said :—"My Lord, without expressing any opinion of my own on the motion, I will state briefly the reasons which have led the hon'ble member to propose this amendment. His first argument is the general one based on the poverty of the raiyats in Bengal. My hon'ble friend considers that the raiyats, especially in Bihár, are so poor as to render it exceedingly inexpedient to give to the landlords the trenchant ground of enhancement embodied in this section (30). The second argument of my hon'ble friend may be briefly stated as follows. Not only does my hon'ble friend consider that the raiyats are too poor to be subjected to so sharp a weapon of enhancement, but he also considers the advantages which the raiyats obtain from an increase in the prices are to a large extent illusory. He believes that the expense of cultivation increases *pari passu*, that very little gain really accrues to the raiyats from a rise in prices, and that what little gain does ultimately accrue to them, is needed by the raiyats to improve their position. My hon'ble friend fears that, if a rise in prices is made a ground of enhancement, not only will the cultivator obtain no advantage but he will be in a worse position than before. The effect of the amendment will be to render it more difficult for a zamíndár to obtain an enhancement on the ground of a rise in prices. I have laid before my hon'ble colleagues the arguments of my hon'ble friend, and I now leave the matter in the hands of the Council."

The Hon'ble SIR STEUART BAYLEY said :—"I must object to the amendment. The long series of litigation since 1859 has proved that it is impossible to say what the nett value of produce is, and no Court has ever been able to find out the cost of cultivation; therefore this ground of enhancement will be absolutely illusory, and the Committee accordingly rejected it."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that for clause (*c*) of section 30 the following be substituted :—

"that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*c*) of section 30 the following be substituted :—

"that the productive powers of the land held by the raiyat have increased otherwise than by the agency or at the expense of the raiyat."

He said :—"This is the present law on the subject. It gives the zamíndár the right to enhance rents for any increase in the productive powers of the land, however caused, unless the cause of increase is the raiyat's own expense or agency. I do not wish to press at this moment

the question of the zamíndár's proprietary right in the land. But it will be found that, even if the raiyat's rent is enhanced, it leaves to the raiyat also a share of the increase which is caused not by his own agency or expense but either by natural or artificial causes. The Bill limits the right of enhancement simply to the ground that the increase is caused by fluvial action, but there may be several other causes with which the raiyat has nothing to do, which improve the productive powers of the land, and for which improvement the zamíndár has an equitable cause of enhancement. Suppose that a railway is constructed, or a public embankment is thrown up which prevents a part of the land from being trespassed upon by cattle or wild animals, or that such work prevents the land being inundated by the overflow of the river, and that this increases its productive powers; again, suppose it be shown that by the better provision made by the Government for the conservation of forests there is greater regularity in the rainfall, and there is therefore an improvement in the productive powers of the land; I submit that in these cases the landlord is equally entitled to a share in the profits. The zamíndár's rent cannot be increased to the full value of the profit; the raiyat will get his share in it. Supposing him even to be a co-proprietor in the land, still the zamíndár, as well as the raiyat, should get their respective shares by reason of such improvement in the productive powers of the land. Instead, therefore, of limiting the ground in the way it is done in the Bill simply to fluvial action, the words of the present law in that respect should be retained."

His Excellency THE PRESIDENT said :—"I think I shall best consult the convenience of the Council by putting this motion to the vote. It is obvious that not only great loss of time but great inconvenience must result from the hon'ble member again moving an amendment which has already been dealt with by the Council. It is quite true there are four words in this amendment which are not to be found in the amendment which has just been negatived, but they do not virtually render the amendment of the Hon'ble Peári Mohan Mukerji in any sense different from that which was moved by the Hon'ble the Mahárájá of Durbhunga."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that in section 30, clause (*d*) and the *explanation* be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to clause (*d*) of section 30 the words "or other specific cause, sudden or gradual," be added.

The Hon'ble MR. REYNOLDS by leave withdrew the amendment that clause (*a*) of section 31 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 31 the words "during a period of not less than three years" be omitted. He said :—"The use of these words will lead to this, that if the majority of the raiyats of a village have submitted to enhancement of rent on account of a rise in the value of produce, and a dozen or a score of raiyats obstinately refuse to pay enhanced rent, the landlord will have to wait for three years before he can sue these recusant raiyats for enhancement of rents. I submit that in a suit instituted under the clause in question it will be enough for the Courts to enquire whether the rents paid by them have been paid *boná fide* by the majority of the raiyats. Enquiry into payment for three consecutive years is not necessary for the decision of such a suit. *Boná fide* payment of rent for a single year is enough to enable the Court to decree a suit for enhancement on these grounds. In other words, I move that the restriction as to proof of three years' payment be removed."

The Hon'ble Sir STUART BAYLEY said :—"I must ask the Council to reject this amendment. It was explained by my hon'ble friend Mr. Reynolds and by His Honour the Lieutenant-Governor yesterday that a prevailing rate is frequently manufactured by *bogus* kabúliyats, that is, a raiyat undertakes to pay a rate of rent which he does not in reality ever intend to pay with the object of proving a high rate in a suit brought against another raiyat. Our object is to show that the rate which ought to be proved is not a rate of this kind, but the actual existing rate, and payment for three years is considered to be good and sufficient proof to afford protection against colourable agreement."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in line 2 of clause (*a*) of section 31, for the word "rates" the word "rate" be substituted

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that section 32 of the Bill be omitted. He said :—"My Lord, this section was so fully considered in the Select Committee, that it would not be right for me to detain the Council by offering any further remarks upon it."

The Hon'ble MR. REYNOLDS said :—"This matter was discussed at length by the Committee, and I do not think the decision come to should be disturbed."

The Hon'ble MR. HUNTER said :—"My Lord, speaking for myself, I also hope the Council will not disturb the arrangement."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 32, for the words "the decennial period" the words "a period of three years" be substituted. He said :—"The section requires that, for the purpose of determining what is the average price of grain for the purpose of working the rule of proportion, the Court must take the average of the immediately preceding ten years. This, I submit, will not only be a work of difficulty and add to the delay and expense of enquiry, but it will in many cases tend to reduce the amount of enhancement which the landlord will be clearly entitled to get. I think that a much shorter

period, say three years, will be a reasonable period for striking an average to work the rule of proportion."

The Hon'ble MR. REYNOLDS said :—"This question was discussed at some length in Select Committee. Originally the term of five years was inserted in the Bill, and it was urged that the period of five years was too short, and concrete examples were given in which it would work injustice, in some cases to one party and in some cases to the other. We, therefore, agreed to the decennial period, but at the same time we added clause (*c*) to enable the Court to take a shorter period in case it was impracticable to take the decennial period."

The Hon'ble MR. HUNTER said :—"My Lord, I too hope that the Council will not alter the term of years fixed by the Select Committee. There are cases in which it would be almost impossible to take a period shorter than ten years. The hon'ble mover of the amendment suggests three years. I would ask him whether, during a year of famine or in the two years following, enhancement of rent should be granted against a tenant on the ground of the rise of prices? The high prices caused by famine often extend over three years. There is really no answer to this. The result of substituting three years for ten years would be that after a period of famine, and while the cultivators were reduced to the last stage of weakness and misery for want of food, a legal system of enhancement (based on the sufferings of the tenants) could be pushed on throughout the famine-stricken districts."

The Hon'ble SIR STEUART BAYLEY said :—"I quite agree with my hon'ble friend Mr. Hunter. It was on his suggestion, and after going into statistics to show how prices varied from year to year and how they were affected for some time after a bad year, that the decennial period was adopted. Nothing is more striking than the slowness with which prices fall after a calamity of that sort, notwithstanding that the harvests have been abundant in the subsequent years. We thought it best to counteract the operation of such special years by taking a large average."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 3 to 6 of clause (*b*) of section 32, the words from "reduced by one-third," &c., to "purposes of comparison" be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in lines 6 to 10 of clause (*b*) of section 32, the words commencing with "provided" be omitted. He said :—"This proviso is based on an entire misconception of the actual state of facts. It takes for granted that in every case, whenever there is a rise in the value of produce, there is a greater proportionate rise in the cost of cultivation. In the voluminous literature on the subject there is not a single statement by any officer to the effect that the rise in the cost of cultivation is in any greater proportion than the rise in the price of produce. Unless that statement can be proved, countenance should not be given to a provision like this which takes the fact to be assured. There are three contingencies with reference to this matter—first, the cost of cultivation may increase in the same ratio as the cost of produce, in which case the rule of proportion will work equitably without any reduction on the ground of the increased cost of cultivation, because it will leave the raiyat not only a proportionate increase of profits but also give him a proportionate increase in the cost of cultivation. If the cost of cultivation is increased in less proportion, it will give the raiyat greater profit, the landlord less. It is only in the third case, where the cost of cultivation has increased in a much greater ratio than the price of produce, that the rule of proportion will work hardly on the raiyat. Unless the Council has before it evidence to show that the cost of production had increased in any greater ratio than the price of produce, I submit it will be unfair to make a provision like this. In my dissent I explained my meaning by a hypothetical case. Suppose the price of produce of a bíghá of land to be Rs. 8 and the rent Rs. 3, the cost of production Rs. 3 and the profit to the raiyat Rs. 2. Then, if the price rises to Rs. 10, by the rule of proportion the amount of the enhanced rent will be Rs. 3-12, the cost of produce will be Rs. 3-12 and the profit to the raiyat will be Rs. 2-8; so that every case in which there is a rise in the value of produce the rule of proportion contemplates a proportionate rise not only in the profits of the raiyat but also a proportionate rise in the costs of cultivation. It is on these grounds that the 15 Judges, in laying down the rule of proportion, distinctly said that the cost of cultivation was not to be taken into account, because it may for all practical purposes be taken for granted that there is a proportionate rise in the cost of cultivation with a rise in the value of produce."

The Hon'ble MR. REYNOLDS said :—"I think the hon'ble member asks too much when he asks the Council not to pass this clause unless it is prepared to show that the cost of production tends to increase more rapidly than the price of produce. It is because it is so difficult to prove the cost of production that all schemes for enhancement on this basis must fall through. There is reason to believe that the cost of production has a tendency to increase in a greater ratio to the rise in price; and if this is the tendency in a considerable proportion of cases we ought to give the raiyat the benefit of the doubt and make the rule general, because we have no data to show to what exact number it will or will not apply. I join issue with the hon'ble member in the hypothetical case of a tenant whose gross produce is Rs. 8, the rent Rs. 3, the cost of production Rs. 3, and his profit Rs. 2. Considering that the average size of holdings in this province is five bíghás, the raiyat in that case will have an annual profit of Rs. 10 on the whole area of his holding. I put it to the Council whether a man in that position ought to be enhanced at all, and, if at all whether the enhancement should not be fenced round with modifications of this kind, so as to give the tenant a fair chance of having sufficient left to him to live upon."

The Hon'ble MR. HUNTER said:—"My Lord, I regret that my hon'ble friend has again raised this question, but I am prepared to meet his amendment with a direct statement of figures, which I hope will be convincing to this Council. The hon'ble member complains that to deduct one-third from the rise in prices, as an allowance for the increased cost of cultivation, would seriously diminish the enhancement of rent. Let me commend to my hon'ble friend's notice the following concrete case:—If a holding at an old rent of Rs. 12 yielded at old prices Rs. 30 worth of produce, and the value of produce were to increase to Rs. 60 or double, then, deducting one-third of the excess value, the proportion would be as follows. As the old value (Rs. 30) is to the new value less one-third of the increase (Rs 50), so will be the old rent (Rs. 12) to the new rent. The new rent, therefore, would be Rs. 20, and I feel sure that my hon'ble friend would not, in his own estates, desire to raise the rent of any tenant by a higher proportion on the ground of a rise in prices. I should feel confident, my Lord, to leave the matter without further comment, if only my hon'ble friend were concerned; because I know his fairness of dealing with his tenants. But, as there are perhaps others who cannot be answered by this *argumentum ad hominem*, I wish to add one other observation. Underlying this particular question of a one-third deduction of the increase, is the general question as to the division of the unearned increment occasioned by a rise in prices. The hon'ble member's amendment would give the whole unearned increment to the landlord. The Bill divides the unearned increment between the landlord and the tenant. The exact proportion of two-thirds to the landlord and one-third to the tenant, as given by the Bill, was decided on after long and mature consideration. I think it is a fair division, and I would, therefore, oppose any attempt to now re-open the question."

The Hon'ble SIR STEUART BAYLEY said:—"My hon'ble friend Mr. Hunter has left me very little to say, for he has stated exactly the line I was prepared to take. I explained in my opening speech how the cost of cultivation tends in this country to increase in a more rapid ratio than the price of produce, and how it acts on the raiyat. Most of the labour is done here by the raiyat or his family, or, where outside labourers are employed, they are paid in grain. On the other hand, what are the other elements which enter into the cost of cultivation beyond the labour used? The principal cost is for cattle, ploughs, manure, &c. Now, while pasturage land is daily diminishing owing to the pressure of population, the cost of keeping cattle is increasing, so much so that within the last few years the raiyats are growing crops for their cattle. For the same reason manure is also becoming dearer, and this adds to the cost of cultivation. What my hon'ble friend said is very true, that the principle underlying the question is that of the unearned increment—in what proportion it should be divided. The Government of Bengal in the letter of the 15th September proposed a deduction of one-half; the Committee decided upon allowing one-third. The fact that the Courts cannot ascertain what the cost of cultivation is, and consequently what proportion of the increase of price should be deducted, is an accepted fact; therefore an arbitrary proportion must be taken, and the question is, where the line is to be drawn. The question has been carefully worked out in the report of the Rent Commission. I will read two extracts from their report. They said:—

'The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place, the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes.'

"Then they go on to consider how the unearned increment is to be divided. They said:—

'In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zamíndár nor the raiyat, but by general causes, the reasoning used above (§ 55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule * * * will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.'

"It will be seen that while some members of the Rent Commission thought the raiyat should have two-thirds and the zamíndár one-third of the increment, the majority came to the same conclusion as the Government of Bengal that it should be equally divided. We have after fully considering all opinions come to the conclusion that one-third should be deducted for increased cost of cultivation, and that the rent should then be increased in full proportion to the increase of prices."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that clause (*c*) of section 32 be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in section 33, line 4, after the word "improvement" the words "made after the commencement of this Act" be inserted. He said:—"My reason is that zamíndárs who before the passing of this Act did not think of registering improvements made by them will be unable to get any enhancement on those improvements."

The Hon'ble Mr. Reynolds said:—"I think the hon'ble member overlooks the effect of section 80, which provides for improvements made before the passing of the Act; the present amendment is therefore not required."

The Hon'ble Sir Steuart Bayley said:—"Section 80 was inserted to meet the case to which the hon'ble mover has referred. If, therefore, the words proposed are inserted in section 33, there will be no ground for inserting that section."

The amendment was then by leave withdrawn.

The Hon'ble Mr. Gibbon moved that section 35 be omitted. He said:—"I will call the attention of the Council to the wording of this section. It says that—

"Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable."

"The first portion of the section allows the Judge a discretionary power to overrule the law. Section 7 gives the Court directions as to what shall be considered fair and equitable. It allows the Court to decree enhancement when the rent paid is below the customary rates paid by other people. Sub-section (*2*) gives an absolute discretion to the Courts only to allow enhancement when the Court considers it fair and equitable. Section 8 goes further. It allows the Court, in cases where it considers that immediate enhancement will fall hardly on a tenure-holder, to allow the enhancement to be made gradually. Section 30 and the following sections lay down the ground upon which occupancy-holdings may be enhanced, and it lays down rules to guide the Court as to what is fair and equitable. Section 36, which we have not yet come to, allows the Court, where the immediate enforcement of a decree for enhancement in its full extent will be attended with hardship to the raiyat, to be carried out gradually. Therefore to declare that the Court shall not in any case decree an enhancement which under the circumstances it considers unfair and inequitable, is unnecessary. It allows the presiding officer, when the bias of his mind tends that way, to ignore the provisions of the Act and follow the bent of his mind; it will give him an excuse to set aside the provisions of the Act. Where it suits the bias of his mind he may, whenever he pleases, set aside the law. We are giving to all judicial officers, even the most inexperienced, a power which the most experienced may hesitate to exercise. The reason to my mind must be cogent, the necessity very great, before we allow a Judge sitting in Court to override the provisions of the law."

The Hon'ble Sir Steuart Bayley said:—"I am not prepared to accept the amendment. The principle that all rents decreed by the Court should be fair and equitable has no doubt been accepted by the Council, but it is not the case that each ground of enhancement carries with it the limit beyond which the law would deem enhancement unfair and inequitable. In its previous stages the Bill provided a maximum, but when the maximum limit was removed, it was provided by one general clause that where the rent decreed, although coming under the rules prescribed by the law, are unfair and inequitable under the specific circumstances, it should not be decreed by the Court: the special circumstances should be taken into consideration. That is the meaning of the section. I know my hon'ble friend will not wish any Court to decree what it does not think fair and equitable. The object of the section is to enable the Court to act by its judgment in the matter. I don't think there is danger that the Courts will be misled by the discretion, because there will always be an appeal to the High Court; the High Court will soon call to order any Judge who exercises his discretion in an improper manner. It is a judicial discretion."

The amendment was put and negatived.

The Hon'ble Mr. Hunter, on behalf of the Hon'ble Mr. Amír Alí, by leave withdrew the amendment that in line 6 of section 35, after the word "inequitable" the following words be inserted:—

"or which would entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble the Mahárájá of Durbhunga by leave withdrew the following amendments:—

That section 37 of the Bill be omitted.

That, in the event of his last preceding amendment not being carried, in lines 7 and 10 of sub-section (*1*) of section 37, for the words "fifteen years" the words "five years" be substituted.

That in lines 15 and 16 of sub-section (*1*) of section 37, the words "or dismissing the suit on the merits" be omitted.

That in section 38, clause (*b*), line 3, for the words "average local prices of staple food-crops" the words "in the value of the produce of the land" be substituted.

That in section 39, sub-section (*3*), line 6, for the words "one month" the words "two months" be substituted.

That in line 2 of sub-section (*4*) of section 39, after the words "Board of Revenue" the words "after hearing any of the interested parties who might have duly entered appearance" be added.

The Hon'ble Mr. Hunter moved that in sub-section (*6*) of section 39, for the words "shewn thereby" the words "shewn in the lists prepared for any year subsequent to the passing of this Act" be substituted. He said:—"My Lord, this Bill will substitute a new and sharp procedure for the enhancement and reduction of rents in place of an old and a complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove an increase in the selling

prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the increased prices to the actual produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complex factors at present and in time past. The present Bill substitutes for this difficult and complicated process the simple question of a rise or fall in the prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is that enhancements which were not practicable on this ground will now become practicable. But the Bill further simplifies the burden of proof. In the first place, it confines the question to the prices, not of the actual produce of the land, but of certain staple food-crops; in the second place, it provides for the publication of price-lists in the official Gazette, which lists are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point.

"The Bill originally proposed that these lists should be taken as conclusive evidence. It appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill as now revised accords only the value of presumptive evidence to these lists. In doing so, however, I would again urge on my colleagues that we have given the same legal value to two classes of evidence, of which the real value is essentially different. For the lists to be published in the official Gazette are of two distinct classes—old lists of prices collected under no adequate safeguards for their accuracy, and new lists of prices to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled under those safeguards will be worthy of acceptance as presumptive evidence. But my enquiries show that the old lists, collected without any of those safeguards, cannot safely be accepted as presumptive evidence. At a late stage in the deliberations of the Select Committee, a decennial period was substituted in place of a quinquennial period; so that the figures submitted to the Committee only enable me to show what would be the results of accepting the price lists for the quinquennial periods originally contemplated. If, then, we take the price-lists submitted to the Committee for quinquennial periods, the curiously conflicting different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver, and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Húgli river would give an enhancement of 12 per cent. in the Burdwan district; and an enhancement of 28 per cent. in the Nadiyá district on the other side. Further up the Ganges the enhancement would be 10 per cent. in the Patna district on the southern bank, and close on 20 per cent. in the Muzaffarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating from the price-lists of rice alone. If we endeavour to correct their discrepancies by adding a second crop to the calculation, say maize, as the Local Government will do under the provisions of this Bill, we get still more astonishing results. In the Bhágalpur district, rents would be enhanced 25 per cent. if calculated on the average prices of rice submitted to the Committee; but they would be reduced 46 per cent. if calculated on the price-lists of maize. In the next district but one to the west, Muzaffarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates; but they would be reduced about 22 per cent. if estimated in maize rates. In the Patna district, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhágalpur, nor 22 per cent. as in Muzaffarpur, but only 2 per cent. These results are worked out from the figures submitted on behalf of the Bengal Government to the Select Committee. I am aware that they are incomplete, and that they would be revised before they were published in the Gazette. But, after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give them the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had under the Evidence Act at the time when they were collected: that is to say, they shall be held by the Courts to be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zamíndárs, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants—a double-edged weapon—which may produce starting results both in the enhancement and in the reduction of rents."

The Hon'ble SIR STEUART BAYLEY said:—"We are prepared to accept this amendment in substance subject to re-consideration as to the wording of it."

The amendment was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in sub-section (7) of section 39, line 1, for the words "Local Government" the words "High Court" be substituted.

The consideration of the following amendments was temporarily postponed:—

(1) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that section 40 be omitted.

(2) The Hon'ble BÁBÚ PEÁRI MOHAN MÚKERJI to move that section 40 be omitted.

(3) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that, if his last preceding amendment be not carried, in sub-section (1) of section 40, lines 2 to 6, the words from "or on the estimated value," &c., to "partly in another" be omitted.

Also to move that in sub-section (*1*) of section 40, lines 6 and 7, for the words "either the raiyat or his landlord" the words "the raiyat and his landlord" be substituted.

Also to move that for sub-section (*2*) of section 40 the following be substituted, namely :—

"The application may be made to the Civil Court."

Also to move that for section 40, sub-section (*3*), and sub-section (*4*), clauses (*a*) and (*b*), the following be substituted, namely :—

"On receipt of the application the Court shall ascertain the description and quantity of the rent in kind paid or payable for the last preceding ten years, and the tenants shall pay in future each year the amount in money which would purchase the same description and quantity of produce at the average prices prevailing for the same in the locality for the five years immediately preceding that for which payment is made."

Also to move that in sub-section (*5*) of section 40, in line 5, for the words "revenue proceeding" the words "civil suit" be substituted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that section 43 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I support the motion. The new rights which the Bill contemplates giving to non-occupancy-raiyats have necessitated the introduction of a number of new sections simply to give them protection in certain exceptional cases where the zamíndárs have not protected themselves by agreements. It is these cases only that the provisions of the Bill, commencing with section 43 and ending with clause (10) of section 46, deal with. It introduces a system which is entirely unknown to this country, and the entire procedure is both cumbersome and expensive as well to landlords and raiyats. I submit that for the purpose of a few exceptional cases such a cumbrous and expensive procedure, and one altogether unknown to the country, may well be dispensed with."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"This is a very novel provision. Mr. Field said :—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of non-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceeded and in his work on land-laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

The Hon'ble MR. REYNOLDS said :—"We are hardly in a position to discuss this amendment until the amendment of section 29 has been settled. It is not definitely stated that the provisions of section 29 are to extend to this chapter. I contend that these provisions are right and proper. The assertion that a non-occupancy-raiyat is a mere tenant-at-will raises a very large question. If we admit the general principle, which, I think, we should, that it is desirable to regulate enhancements, I am aware of no reason why it should not be extended to non-occupancy as well as occupancy-raiyats. With regard to section 46, we leave enhancements out of Court entirely to arrangement; the only protection we give to the non-occupancy-raiyat is that, if he refuses to agree to the enhancement proposed, we give him the liberty to claim a five years' judicial lease. I think it very reasonable that he should have that consideration granted to him. It has been all along put forward as an object of our legislation to extend the occupancy-right as far as possible, and this section and section 46 do not go unreasonably far. I should be sorry to see any alteration made in section 43."

The Hon'ble MR. GIBBON said :—"I may say briefly that I do not approve of the motion. I approve of the section as it stands. The occupancy-raiyat is in a different position to the non-occupancy-raiyat. The occupancy-raiyat is not compelled under any portion of the Bill to enter into any written engagement with the landlord. If his position is disputed by the landlord, he can appeal to the provisions of the Bill to have the terms and conditions of his holding determined. When a non-occupancy-raiyat is let into possession of land, he may be let in under a written agreement; at the end of that agreement he may have his rent enhanced or adjudicated; and if it is to be adjudicated the procedure for such adjudication is laid down. If the landlord and the non-occupancy-raiyat come to terms amongst themselves, it is very necessary that the landlord should at once put into writing the terms on which the tenant holds the land. It is not necessary that it should be alleged that he held for three years without written agreement, in order that his holding should be binding. If his holding is by verbal arrangement, he can reject any claim for enhancement and claim an adjudication of rent for five years. I cannot see what effect the provisions of section 29 will have on this section. I maintain that the section is right in principle and will be equitable in practice and should be retained."

"His Honour THE LIEUTENANT-GOVERNOR said :—"I also oppose the motion. The non-occupancy-raiyat has not a satisfactory position. He enters on land on such terms as he can settle with the landlord, and it is quite in the power of the landlord when the term of his engagement expires to evict him under section 44, clause (*c*). But if the landlord demands enhanced rent, section 43 comes into operation, and the raiyat is obliged either to agree to the terms proposed or to the rent determined by the Court, for which section 46 provides. Considering that the object which the majority of the Select Committee have always had in view, of affording some measure of protection to the non-occupancy-raiyat, I think it is neces-

sary for the future relations of landlord and tenant that this section should be allowed to stand."

The Hon'ble SIR STEUART BAYLEY said:—"I agree with His Honour the Lieutenant-Governor as to the necessity of supporting the rights of non-occupancy-raiyats. It has all along been one of the objects of the Government of India in introducing this Bill to provide a certain amount of modified security in the position of non-occupancy-raiyats. As I said on a previous occasion, the strength and security which our Bill gives to non-occupancy-raiyats is very far short of that given to occupancy-raiyats, but is in advance of the present law, and has been deliberately made. The particular section which we are asked to remove is one which provides that the rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement under section 46. I cannot accept this amendment as it stands. It is rather premature to discuss the bearings of the clause which I propose to insert in section 29, but I cannot avoid following the hon'ble mover of the amendment by saying a few words. If we accept the principle of part-performance for one class of raiyats, the same considerations point to its being accepted for the other class. The effect of this is worth considering. It means that after the initial lease of the non-occupancy-raiyat expires, if his rent is enhanced verbally, the landlord would not sue for the enhanced rent except on proof that the raiyat had paid for three years. The result would be to facilitate the growth of occupancy-rights, for first comes the period of the initial lease, then the admission of three years' subsequent occupation, and then, if the enhancement is contested, will come in the provisions of a judicial lease for five years. I propose therefore that, when the discussion comes on on the amended section 29, the hon'ble member should say whether he desires to introduce a similar clause in this chapter. If he does, I shall of course be prepared to accept it. In the meantime I must protest against the acceptance of the amendment before the Council."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 43 the words and figures "or by agreement under section 46" be omitted. He said:—"I have already submitted the arguments in connection with this amendment in my speech on the preceding amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in clause (*b*) of section 44, line 4, the words "consistent with this Act, and" be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in clause (*c*) of section 44, line 2, the word "registered" be omitted. He said:—"The reason is that there is no registered lease."

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS moved that in clause (*c*) of section 44, after the words "registered lease" the words "for a term of not less than five years" be inserted. He said:—I need not detain the Council with any detailed or elaborate argument in support of this amendment. The position of the non-occupancy-raiyat is this, that he has to pay the rent agreed upon, and if admitted to occupation on a registered contract he may be ejected on the ground that the term has expired. There is no stipulation or arragement in the wording of the Bill as to the term for which the initial lease ought to be granted, but I believe it will be generally considered that the grant of a lease for a reasonable term of years ought to be encouraged, and my position is strengthened by one of the dissents, in which it is remarked that the effect of the operation of some of the provisions of this chapter will be to place the non-occupancy-raiyat in a worse position than at present; the landlord, having an absolute right to eject him, will in every case grant a lease for a short period and reduce the non-occupancy-raiyat to a mere tenant-at-will. That will be guarded against to a certain extent by this amendment that the initial lease shall be in every case for a period of not less than five years. If the landlord desires to take advantage of the clause which permits him to eject the raiyat at the expiration of the lease, the lease originally given should not be for less than five years."

The Hon'ble MR QUINTON said:—"I think this proposal is worthy of support. The hon'ble member in charge of the Bill has said that one of the objects of the Bill is to give a greater degree of protection to the non-occupancy-raiyat than what he enjoys under the existing law, and there have been, since this legislation commenced, various schemes proposed to give effect to it. The main protection proposed to be given is that where the landlord wishes to enhance the rent he must give notice, and if the tenant refuses to pay the enhanced rent the landlord can demand such rent as the Court thinks fit for five years. This is undoubtedly a great protection beyond what he enjoys under the existing law. But it appears to me that if the power of ejectment stands as it is now, that the landlord may turn him out on the expiration of the lease by a mere notice to quit, the landlord can nullify all the clauses of this chapter by giving the necessary notice. I think therefore that the chapter as it stands is open to the objection that the protection it holds out can be defeated by such means."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I think this amendment will give non-occupancy-raiyats what they not only never possessed but will convert them into something like occupancy-raiyats, giving them a right to hold for at least five years, although the zamíndár may wish to let in a raiyat for only a year or two for a mere temporary purpose. If the raiyat does not agree to such short term, the lessee will have the option to reject the engagement and to apply to some other landlord, or to come to some other arrangement with his landlord. But there is no reason why to a raiyat who has admittedly no rights whatever the landholder should be forced to give a lease extending for at least five years, and if he does not do so he will have no right to eject the tenant. Nothing that has been placed before the Council justifies or warrants a provision of this kind."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" Provisions like this will defeat the very object for which they are enacted, and I trust the amendment now proposed will not be accepted by the Council."

The Hon'ble MR. HUNTER said :—" My Lord, I oppose this amendment. I believe that it strikes at one of the fundamental principles of the Bill, namely, the distinction between the occupancy and non-occupancy raiyat. The Bill makes provision for the very effective protection of the occupancy-raiyat; it also provides for the development of the non-occupancy-tenant into an occupancy-raiyat. But one of the principles which I personally laid stress on from the commencement, was the recognition of the initial freedom of contract between a landlord and a new tenant. After much discussion this principle was accepted by the Select Committee, and the initial freedom of contract between a landlord and a new tenant was formally affirmed by that body. I regard this amendment as an attempt to indirectly weaken the effect of the decision thus arrived at. I do not think that the amendment is justified either by the position of the non-occupancy-tenant in the past, nor by the status which he actually possesses at present. Further, I think that it would be at once impolitic and unjust, at the present late stage of the measure to introduce a provision which would seriously curtail the acknowledged rights of the zamíndárs in regard to a large class of tenants."

The Hon'ble MR. GIBBON said :—" I also oppose the amendment."

His Honour THE LIEUTENANT-GOVERNOR said :—" I support this amendment because it gives to the non-occupancy-raiyat a securer position than the Bill as it stands will give him. I may be allowed to allude here to a part of the opening speech of my hon'ble friend Sir Steuart Bayley, that my words and action in a previous debate on this measure are inconsistent with the position I now assume. I stated, if I remember rightly, in the discussion of the Bill last year that there was a wide distinction between the position of the occupancy and that of the non-occupancy raiyat, and I am prepared to stand by that doctrine. Now when I made that statement I was arguing against the proposal of the Government of India in its recommendation to the Secretary of State, that the whole distinction between rights of occupancy and non-occupancy should be abolished; that legislation should proceed on the basis of not recognizing any distinction between the two classes; that we should begin from the recognition of all raiyats being in the same position. My contention was that any legislation based upon such a theory was wrong as being contrary to the practice recognised since the Permanent Settlement. I urged that every Collector in the country would tell you that non-occupancy-raiyats do not stand in the same privileged status and position as the raiyat who has occupancy-rights, and I felt sure that, if legislation on the wide basis proposed by the Government of India was attempted the difficulties connected with legislation on the subject would be very greatly enhanced. I would appeal to hon'ble members whether, in dealing with a Bill which ignored any distinction between the two classes, the difficulties would not be very much more serious than now when we recognise such difference; and I may claim the support of those hon'ble members against whose interests I am supposed to have acted whether I have not, in this matter at any rate, represented the principle which they accept. The words in which I entered my respectful protest against the recommendations of the Government of India can be quoted, and, to say the truth, I am rather proud of the fact that the decision of the Secretary of State was in accordance with the views which I held. But it is quite a different thing that, while you recognise a distinction between the two classes of raiyats, you still can recognise the necessity that the non-occupancy-raiyat should have facilities placed in his way which will enable him to grow into an occupancy-raiyat; and in dealing with the subject I have never varied from the expression of the hope that this legislation would put such facilities in the way of the non-occupancy-raiyat not only in his own interests but in the interests of the zamíndár. All the provisions which have ever been contemplated to secure his status by means of compensation for disturbance, judicial leases or otherwise came not from me nor, as far I am aware, from any particular member of this legislature, but originally from the report of the Famine Commission. As the Bill has come out of the hands of the Select Committee, I do not think the non-occupancy-raiyat has been secured in the position which I would desire him to have; and anything therefore which has a tendency to improve his position, to enable him to reap the fruits of his industry and to secure with the acquiescence of the zamíndár his growth into the position of an occupancy-raiyat deserves the favourable consideration of the Council. If therefore the Council see their way to accept the proposal that the initial lease should be for a term of not less than five years I shall be glad; because while the zamíndár will still have the right of eviction, he will gain thereby an opportunity of seeing whether he has got a good tenant or a bad one.

The Hon'ble SIR STEUART BAYLEY said :—" I have rarely had more difficulty in making up my mind on any point than on that now before the Council. But before I deal directly with the question you are asked to vote upon, I wish to offer a few remarks with reference to what has just fallen from His Honour the Lieutenant-Governor. I must venture respectfully to correct a misapprehension into which His Honour has fallen. In my opening speech I was quoting from what the Lieutenant-Governor said in the debate in this Council two years ago after the Bill drawn in accordance with the Secretary of State's views had been introduced. I was certainly not guilty of quoting from any paper which His Honour may have written protesting against the letter of the Government of India of March, 1881. No such paper has been published, and if it exists I could not with propriety have referred to it. The particular expressions which I used were out of the above speech, in which he dissented to the compensation for disturbance scheme in regard to non-occupancy-raiyats, on the ground that the non-occupancy-raiyat had no rights. I only wish to correct this misapprehension.

"Coming now to the actual point before the Council, the arguments on the two sides respectively appear to be these. We want the non-occupancy-raiyat to have the chance of acquiring the occupancy-right. At the same time we want not to take away from the zamíndár all power of selecting a good raiyat and all power of regulating the rents of his raiyats. In respect of the former I have always supported the position that the zamíndár should have the power to eject a raiyat at the end of an initial lease. Unless you give him that right I do not see how, if he lets in accidentally an unsatisfactory, cantankerous or turbulent man, he is to get rid of him. I think it is fair he should have some selection in the first letting of his land. On the other hand, we want the occupancy-right to accrue in the hands of the non-occupancy-raiyat. I have not supposed that zamíndárs will, as a rule, be anxious to eject the raiyat at the end of the initial lease. I would still believe, in spite of what the hon'ble member has said in his dissent, to the effect that in all cases the zamíndár would give a one-year's lease in order to be able to eject the raiyat when he pleases, yet wiser counsels will prevail and that he will see that it is not for his interest to do so. I may mention also that the question of giving a long lease in the first instance was urged upon us by high authority, and it was considered a good deal by the Select Committee, but it was not accepted at the time. It was considered, I must confess, not so much with regard to the question of ejectment at the end of the time, as with regard to the question of compensation for disturbance. The principle of the proposal was that a non-occupancy-raiyat ought either to have a long lease or if he only received a short one, then he ought to have compensation for disturbance. But compensation for disturbance fell through. Now the question has to be decided, is it an object to leave the zamíndár a right to select his raiyat, and to say for how long he shall have a lease in the first instance, or that we should tie his hands and say 'You shall not have a raiyat for less than five years'? I have great difficulty in making up my mind, as anybody's decision will depend upon whether he thinks the old rights of the zamíndár ought to be retained, or that the necessity of supporting the raiyat is of a paramount importance. On the whole, I think we ought not to overthrow the rights of the zamíndár, and I think we have given the raiyat a fair chance of becoming an occupancy-raiyat. I am afraid also that the specific safeguard, even if unobjectionable in principle could so easily be evaded as to be valueless. On the whole therefore I incline to vote against the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*d*) of section 44 the following be substituted:—

"on the ground that he has refused to agree to pay enhanced rent at a rate not exceeding double the rate of rent paid by him during the preceding five years."

He said:—"This is offered to the Council as an alternative for the expensive and tedious procedure contained in the Bill. I think it will afford sufficient protection against capricious enhancement of rent and ejectment on the ground of refusal to pay enhanced rent. This double limit is the limit which was from the time of the Rent Commission suggested as a reasonable provision not only for non-occupancy but for occupancy-raiyats."

The Hon'ble SIR STEUART BAYLEY said:—"The amendment means that we should get rid of the judicial lease. Now, this judicial lease is really an assential part of the protection given to the non-occupancy-raiyat, and, whatever value may be attached to the protection as it stands, I quite agree with those who think the protection will not be worth anything if a judicial lease is not permitted when the non-occupancy-raiyat's rent is enhanced by the Court. I therefore oppose the amendment.

The amendment was put and negatived."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that in section 44 the following be added as a ground for eviction:—

"(*e*) on the ground that he has committed waste or caused the deterioration of the soil."

He said:—"It has been settled by the Council with reference to the occupancy-raiyat that even he may not be allowed to commit with impunity waste on the land or cause deterioration of the soil. If the non-occupancy-raiyat, whose legal status and rights are much inferior to those of the occupancy-raiyat, does these things, I cannot think it reasonable that the Bill should contain no provision for such cases."

The Hon'ble SIR STEUART BAYLEY said:—"I think the Council decided yesterday that the proper penalty in such cases was not eviction but a suit for damages or for an injunction. 'Waste' was a word which had absolutely no meaning as applied to cultivation in this country. Why! the whole process of agriculture in this country has been described by a great authority as one of 'spoliation of the land.' All cultivation here, if compared with the English method, would be regarded as waste, and the use of the word would introduce an extraordinary amount of uncertainty and litigation."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that to section 44 the following be added as a ground for eviction:—

"on the ground that he has, without his landlord's consent in writing, sub-divided or sub-let his holding or any part thereof, save as expressly authorised by this Act."

He said:—"Both the Government of India and the Secretary of State have recommended that sub-letting should be discouraged. The evils of the institution are well known. If it be held an objectionable practice in the case of occupancy-raiyats, how much more so it must be in the case of non-occupancy-raiyats. Even the friends of the raiyats have urged on the legis-

lature the necessity of provisions for preventing the evils of sub-letting, and I find that it was one of the institutions which the Famine Commission very strongly condemned in their report."

The Hon'ble MR. REYNOLDS said :—"I think the question of sub-letting is sufficiently provided for by section 85, and that of sub-division by section 88."

The Hon'ble SIR STEUART BAYLEY said :—"Sub-division is absolutely invalid without the landlord's consent in writing, and sub-letting is only validated under certain very exceptional circumstances under a registered lease."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I wish to point out that the provisions as to sub-letting in section 85 apply only to occupancy-raiyats, because, although the word 'raiyat' has not been qualified, the provision which it contains that a sub-lease may extend to nine years is inconsistent with the position of a non-occupancy-raiyat in the Bill."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHUN MUKERJI moved, on behalf of the Hon'ble the Maharájá of Durbhunga, that to section 44 the following be added as a ground for eviction :—

"on the ground that he has disclaimed the title of his landlord before any public officer or Court."

He said :—"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions. As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he cannot be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won over by the rival party who may not really be in possession. In common rent-suits raiyats thus gained over raise issues of title and plead adverse possession. The whole question of title is fought out as a side issue. We are sure this hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the landholder to disprove. Justice and expediency alike demand that the judge-made law on the subject should not be repealed by implication."

The Hon'ble MR. REYNOLDS said ;—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble MR. ILBERT said :—"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-book. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard it with disfavour and limit its application in every possible way.

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bonâ fide* doubt as to the person entitled to his rent to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárája of Durbhunga, withdrew the following amendments :—

That in section 44 the following be added as a ground for eviction :—

"(4) on the ground that he has persistently obstructed the landlord or any person authorized by him in entering upon the holding for any lawful and reasonable purpose."

That in section 44 the following be added as a ground for eviction :—

"(i) on the ground that he is a person imprisoned for debt or convicted of any offence against his landlord or any resident cultivator of the village."

That in section 44 the following be added as a ground for eviction :—

"(j) A landlord may, in any other case, obtain a decree for eviction by giving one year's notice to quit and such compensation as the Court may consider fair and equitable under the circumstances of the case."

That in line 8 of section 45, for the words "six months" the words "one year" be substituted.

That to section 45 the following proviso be added :—

"If the landlord fails to prove the service of the notice to quit, the Court shall, on proof of his right to eject, grant to the tenant six months' time to vacate the holding from the date of the decree."

The Hon'ble Mr. Amír Alí moved that after section 45 the following section be inserted :—

"Where, after receipt of such notice and before institution of suit, the raiyat expresses his willingness in writing to pay for his holding a fair and equitable rent to be determined by the Court under section 46, clause (b), or by arbitrators appointed by the Court or by the parties themselves, the raiyat shall be entitled to remain in occupation of his holding at the rent so determined for a term of five years from the expiration of his lease, but on the expiration of that term he shall be liable to ejectment under the condition mentioned in section 45 unless he has acquired a right of occupancy."

He said :—"I have stated in my dissent that the Bill provides no efficient safeguard against the ejectment of a non-occupancy-raiyat with a view to prevent the possibility of his acquiring an occupancy-right. To exemplify my meaning I have simply to point to clause (c) in section 44 which I move to omit from the Bill. It has been stated in this Council that 90 per cent. of the raiyats in Bengal possess occupancy-rights. My view is that the majority of the raiyats of Bengal, who possess occupancy-rights, possess it only by courtesy. One of the most experienced Native officers of Government in the Executive Service—I allude to Babú Bunkim Chunder Chatterji—thus speaks on the point :—'Most of the agriculturists are tenants-at-will, and the zamíndár can eject them at his pleasure; rights of possession are in many places only chimerical; the raiyats have possession by law, but not as a fact.' My hon'ble friend Dr. Hunter, in his Statistical Account of Bengal, says that 'the husbandmen seldom change their holdings, and the same land generally descends from father to son, so that most of the cultivators may be said to have a sort of occupancy, although when a dispute occurs with the superior landlord the cultivator generally loses his case'—5 Vol., page 92. Another writer of great experience ascribes this to the fact that in the *jama-wásil-báki* papers the zamíndárs constantly charge the names of the raiyats. One can easily imagine that those who believe the acquisition of occupancy-rights by the raiyats is in derogation of the right of the landlords should endeavour by every possible means to prevent the raiyats acquiring those rights. One must judge of the future always by the past. Hitherto the landords have had recourse to illegitimate methods for the purpose of preventing the acquisition of occupancy-rights; how much more will the endeavour be repeated after the recent angry discussion? Is it likely that any raiyat once let in under a registered lease will be allowed the chance of holding that specific land or any land within the *village* for 12 years or more? In the face of what has already happened, in the face of what we hear asserted every day, it is idle to say that there are no just grounds of apprehension on this score. Every raiyat will henceforth be let in under registered leases, and will be required to give up his holding on the expiration of his lease and get other land beyond the village, and this process will henceforth take place under the countenance of the law. Will such a thing be to the eventual good of the country? I believe there cannot be two opinions regarding the beneficent results accruing from a general extension of the right of occupancy. When one considers the insecurity attached to a common tenant's position, of his consequent unwillingness to improve his cultivation, to do more than eke out a bare subsistence, the necessity for giving some substantial guarantee against frequent and arbitrary eviction will at once be realised.

"If you give some assurance to the raiyat that his holding is his own, that it would descend to his heirs, that he would not be ejected from it as long as he paid a fair and equitable rent, you furnish him with a strong motive to develop the resources of the soil. With a view to afford the non-occupancy raiyat some protection I beg to move the insertion of the section I have read out."

The Hon'ble Mr. Reynolds said :—"However much I sympathise with the object of the hon'ble member, I am afraid his amendment is inconsistent with the principle which has been already accepted, of the zamíndár's right to eject at the end of an initial lease. The Council has decided that a landlord ought to have the power to get rid of a tenant at the end of that term. But the amendment of the hon'ble member is directed to the root of that principle; herefore I think that to accept the amendment will be inconsistent with the decision of the Council."

The Hon'ble Sir Steuart Bayley said :—"I oppose this amendment, because it is absolutely inconsistent with the decision which the Council has just come to."

The amendment was put and negatived.

The Hon'ble Bábú Peári Mohan Mukerji said :—"I do not withdraw my amendment that section 46 be omitted, but I think that as a necessary result of the loss of my amendment on section 45 this amendment will also be negatived."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, moved that section 47 be omitted. He said :—" I think this section as it stands is altogether unnecessary. It simply tries to formulate a rule which is merely a rule of evidence on which the Courts would be guided by the general principles of the law of evidence. If the section is inserted, it will simply be superfluous. If a lease comes after a previous lease it cannot be said that the raiyat has been newly admitted to occupation under the second lease. I think this question may well be left to the Courts."

The Hon'ble MR. REYNOLDS said :—' This section really seems to me one of the most practical use and value in the whole chapter. A non-occupancy-raiyat is liable to be turned out at the end of an initial lease or any subsequent lease, if he has not attained rights of occupancy. His only protection is in the possibility that the zamíndár will not take the trouble to apply to the Court. The section was retained by the Select Committee, as it gives a very practical and valuable security."

The Hon'ble SIR STEUART BAYLEY said :—" I entirely agree as to the great importance of this section. If this section were of no importance, and if the Courts would always come to the same conclusion without it, I am not sure that I understand on what grounds the hon'ble member is so anxious to expunge it. It is because it is of much value that I object to its omission.

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for section 29 the following be substituted :—

"29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

"(a) the contract must be in writing and registered ;

"(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

"(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

"Provided as follows :—

"(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

"(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" I think the draft which has been circulated embodies the conclusions to which the Council arrived at yesterday's meeting after the debate on the Hon'ble Mr. Evans' motion. I should beg only to suggest that the provisions of this section, which applies to only occupancy-raiyats, should be extended also to non-occupancy-raiyats."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" The only point I have to suggest is that which was referred to yesterday by the Hon'ble Mr.. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease which is not admitted, as may be seen from the first proviso in this amendment, which runs thus :—

'Nothing in clause (a) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year for which the rent is claimed."

" The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus :—

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable,'

I hink the term 'specially low rate' is very indefinite, and will lead to litigation ; so also is the expression 'in consideration of cultivating a particular crop for the convenience of the landlord'. While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill."

The Hon'ble Mr. REYNOLDS said :—" I do not wish to detain the Council after the long discussion which took place yesterday, but I regret that the hon'ble member in charge of the Bill has surrendered the principle that enhanced rent should only be enforced under a registered agreement. The importance of that principle is very great, and even under the circumstances which were so forcibly put before the Council by the Hon'ble Mr. Evans, I still think that the security of a registered agreement is so great that some inconvenience ought to have been risked in order to obtain it. The Bihár Rent Committee decided that there should be no enhancement out of Court, except under the form of a registered agreement, and that was the opinion

of practical men, both official and non-official. We know the procedure under which enhancements are obtained in that province, and that there are not many enhancement cases in Bihár, because they are not wanted. The landlord simply gets the patwárí to put down the enhanced rent in the jamábandi and he sues on the jamábandi. There is evidence before the Council to show that that is the common way in which it is done. It is true that under this section enhancement cannot take place till after three years, but even with that limit there is great danger in allowing this if we have not the security of a registered instrument. I referred to the precedent of the North-Western Provinces Rent Act, and I was told that the cases were not parallel, because in the North-Western Provinces the agreement may be registered before a kánúngo, and we have not that facility in Bengal. I do not admit that that does away entirely with the parallel. We have quite as many registering officers in Bengal as there are kánúngos in the North-Western Provinces, but I admit that we have not got these village officers at present, and the people are not accustomed to the registration system. But this objection will no longer apply when we have, as I hope before long we shall have, a survey and record-of-rights, and the means of maintaining it in Bihár. I trust the hon'ble member in charge of the Bill will not object to put in words in the section which will exclude from the objection of that clause any local area in which arrangements have been completed for a survey and record-of-rights. There will then be no excuse that there is no village-officer before whom the registration can be made. If the hon'ble member will agree to that clause it will remove a good deal of the objection I feel to this proposal. In regard to clause (iii), as to specially low rates of rent in consideration of cultivating particular crops, I should have been better satisfied if it were confined to contracts already existing. I cannot see the necessity for future contracts under this special provision. In future it will be in the power of the landlord to make an agreement at a higher rate, with a condition that the tenant shall hold at a lower rate as long as he grows certain crops. The provision as it stands is calculated to lead to a good deal of litigation owing to its indefiniteness."

The Hon'ble Mr. Hunter said :—" My Lord, this amendment has been attacked both as to the form and as to its principle. The form of the amendment may, I think, be safely left to the hon'ble member in charge of the Bill and to the hon'ble the Law Member. But with regard to the principle embodied in the amendment, I feel bound to say that it seems to me to be both fair and wise. Hon'ble members of the Select Committee will be aware that I agreed to the section as it stands in the Bill with great reluctance, and I felt that reluctance afresh as I listened to the speech of the Hon'ble Mr. Evans yesterday. No one could have followed that speech without perceiving that the Bill as it stands attempts to legislate in the teeth of the established custom in Bengal. I therefore accept my Hon'ble friend's amendment as the best compromise which has been presented to us. It embodies a principle which the majority of the Select Committee desire to retain, and at the same time it removes certain defects from the section as it now stands in the Bill."

The Hon'ble Mr. Amír Alí said :—" I am very loth to trespass on the time of the Council, but as I spoke against the amendment as it was proposed by the Hon'ble Mr. Evans I wish to say a few words on its present form. I desire to endorse what fell from the Hon'ble Rao Saheb Mandlik. We have introduced a most indeterminate element where there was something determinate before. We have by proviso (i) done away entirely with the beneficial effect of the preceding clause ; and with reference to clauses (ii) and (iii) I am bound to say that they appear to me so complicated, involving so many difficult considerations, that the judicial officers trying cases under these clauses may well be required to pass an examination before they are entrusted with the adjudication of those questions."

The Hon'ble Mr. Gibbon said :—" I beg to record my approval of the amendment in preference to what is in the Bill. But I regret the Council did not see their way to accept the proposal of the Bihár Committee, which met with the approval of the Hon'ble Mr. Reynolds. That proposal was that it should be left to landlord and tenant to come to a mutual understanding provided such agreements are in writing and registered, without determining by law the terms and conditions of the agreement."

His Honour the Lieutenant-Governor said :— " I accept the compromise as a solution of the difficulty."

The Hon'ble Sir Steuart Bayley said :—" I think I should offer some reply to the objections which have been made. I did not altogether follow some of the severe criticisms of the Hon'ble Rao Saheb Mandlik. In regard to the first point, the vague and indeterminate drafting of the third clause, I am in the hands of the Council. I can only say that it has satisfied the Hon'ble Mr. Evans and the Hon'ble the Law Member of the Government. I think I may place their approval against the criticism of the hon'ble member, and I think the Council may safely trust to their guidance as far as the matter of drafting is concerned.

" Then we come to the criticism of the principle involved in the amendment. The Hon'ble Mr. Reynolds objects that I have surrendered the valuable principle of enhancement by registered contract, and especially in regard to Bihár. I think I value the principle of registered contracts as much as anybody can. I have always said that I look on this as a most important section of the Bill, not only from the good effect of registration in reducing and simplifying legislation, but also from its indirect educational effect on the raiyat's knowledge of his rights ; but I yielded to the strong case made out by the Hon'ble Mr. Evans showing how great a change the law involves in the actual facts of everyday life, and what inextricable confusion may take place unless we take these facts into consideration, and I waited with great anxiety and earnestness to hear what reply would be made to him. I can only ask the Council whether my critics gave or attempted to give anything like a sufficient answer to these argu-

ments, and whether it is not my duty to accept acompromise which gives distinct and definite point to our wish and anxiety that contracts should be registered in every case possible, but at the same time does not enable the raiyat to repudiate an agreement which he had carried out for 10 or 15 years, because at some long antecedent period the rent was low and no subsequent contract could be produced. Defence of such a position was absolutely impossible, and I do not think the Council will be wrong in accepting this compromise. Then I come to the suggestion which the Hon'ble Mr. Reynolds made with regard to the example of the North-Western Provinces Rent Act. He said rightly that the parallel was not exact. Granted that we have a number of registering officers equal in number to the kánúngos of the North-Western Provinces, yet the actual difficulty was not in the number of officers but with regard to a record-of-rights being prepared and maintained. In the North-Western Provinces you have such a record, in Bengal you have not, nor have you a registration of rents or the machinery to maintain it. The hon'ble gentleman asked whether I could not see my way to provide that, when Chapter X of the Bill comes into force in any place, this proviso should cease to have effect; that is, that we should insist on the contract being registered before a Revenue-officer. Chapter X refers to the preparation of a record-of-rights; it does not provide either for the maintenance of that record, or for the correction of it or for the control of the officers who have to keep it up. Consequently, Chapter X alone will not give the facility or the security which the North-Western Provinces system now gives. These matters are, however, within the competence of the Lieutenant-Governor's Council to legislate for, and I will point out that the last section of the Act gives the Lieutenant-Governor power to legislate for the amendment of the Act; and should the time ever come when the system in Bengal is in this respect on all fours with the North-Western Provinces, then it will be quite in the power of the Lieutenant-Governor to assimilate the system in Bengal to the system in the North-Western Provinces, because then the two systems would be on entirely the same basis."

The amendment was put and agreed to.

The Hon'ble Bábú Peári Mohan Mukerji moved, on his own part and on behalf of the Hon'ble the Mahárájá of Durbhunga, that section 48 be omitted. He said:—"The institution of payment in kind is one of the oldest institutions in the country. It has always worked very satisfactorily. It is free from those sources of dispute and litigation which are inseparable from money-rents. It involves no suits for enhancement or abatement of rent. The benefits of a rise in the price of produce are shared both by the landholder and his tenant without the interference of Courts. The tenants are not driven into debt, and if they have to borrow they borrow from their landlord, whom experience has shown to be a much less exacting creditor then the village-usurer. The landholder participates in the profits and losses of the cultivation, and in districts like Patna and Gayá, where the *bhaoli* system obtains, the landholder co-operates with his tenants in the cultivation. It is the landholder who clears the water-channels and maintains the embankments. If the works were left to individual raiyats, they would be wholly unable to maintain the works with the limited means at their disposal, and cultivation would come to a deadlock. It would be therefore very inexpedient to give either of the parties the right to make capricious claims for the conversion of produce-rents into money-rents, and I think it would be in the interests of both landholders and raiyats if this section were omitted."

The Hon'ble Mr. Quinton said:—"My hon'ble friend started by saying that payment of rent in kind was for the mutual advantage of the raiyat and the landlord. He thought the parties themselves were the best judges of their own advantage; and if they find it is for their mutual advantage, neither party will apply for commutation. I would point out that the rule we propose to apply is in force in the North-Western Provinces and the Central Provinces, in which large tracts are under the system of cultivation known as *bhaoli* tenures. I do not propose to detain the Council by a discussion on the advantages or disadvantages of the *bhaoli* system: on the one hand, it benefits the landlord in seasons of prosperity, on the other, it protects the raiyat from calamities of season. But we think the principle is a sound one that either party to whom it is an advantage should have the option of applying for a commutation of rent. On these grounds I oppose the amendment."

The Hon'ble Sir Steuart Bayley said:—"I cannot altogether agree that the doctrine which the hon'ble mover of the amendment has laid down, to the effect that the payment of rent in kind is free from dispute or litigation, is the correct doctrine on the subject, because I have spent a great part of my life in districts where such holdings are common, and my experience is directly to the contrary. I am not one of those who look on payment of rent in kind as in itself an evil which ought to be got rid of. That opinion is very commonly held, and at one time it was held strongly by the Board of Revenue, and it was then their policy to discourage it in every way. This perhaps accounts for the absence of all provisions for dealing with it from Act X of 1859. I have myself seen the great advantage of it. The system is one under which in a bad season the landlord shares the risk, and the raiyat never has to pay more than a certain share of what he reaps; it enables him to tide over a very bad year without being utterly broken down, as he would be if he had to pay a money-rent. In South Bihár, where the system most prevails, the country depends very much on the rainfall; water is collected in reservoirs, which are prepared partly by the raiyats and partly at the expense of the landlord; that is, the raiyats supply ordinary labour and the landlord supplies skilled labour besides giving the raiyats a meal during the time they are at work; and this reservoir supplies the smaller channels, the whole cultivation depending upon it. I should be sorry to see a sudden stoppage put to that system. But there is no question that cultivation under the *bhaoli* system is careless and unprogressive; the raiyat knows that the full advantage of whatever

better cultivation he may make will not go to himself. I think the hon'ble member's objection would have had great force if the Bill provided, as the original Bill did, that the raiyat or the landlord might demand absolutely and in every case to have a commutation in money; but we have now simply given the right to apply for commutation, and have also given the Revenue-officer a discretion to refuse. It is not possible to lay down definite rules to guide the Revenue-officers whether the application should be granted or not. The circumstances are so diverse that it will be impossible to do it. Speaking for myself, I could easily decide in some cases whether it would be good or bad. Unquestionably where the interests of a great number of raiyats are concerned, where one reservoir supplies a number of homogeneous holdings with water, it will be entirely wrong to grant the application of an individual raiyat; but where we have to deal only with the holding of an individual raiyat, where this does not depend on one general system of irrigation, I do not see why he should not be allowed to commute. Again in regard to the landlord, the *bhaoli* system is a good one for a small landholder, who can look after the proceeding himself, but for a large landholder, who has to trust to agents, it is a bad one. It allows an enormous amount of simple cheating by the landlord's agents and against the landlord's agents by the raiyats. We must leave it in each individual case to the Revenue-officer, who goes to the spot to decide. I am told that no hardship or injury to the raiyats under this system is made out. This I must absolutely contradict. I would refer you to the opinion of the Commissioner of Patna who succeeded me. He defends the system on the whole on the same grounds as I do, but says it leaves the raiyat at the mercy of the landlord's agents.

"Similar but much stronger remarks are made by the experienced Deputy Collector whose words are quoted by the Bihár Rent Committee, and are brought forward by them as the foundation of their recommendation. The proposal that commutation should be allowed was originally made by that Committee and adopted by the Rent Commission, and I find it in every subsequent proposal in regard to legislation for Bihár."

The amendment was put and negatived.

The Hon'ble MR. AMÍR ALÍ by leave withdrew the amendment that in line 3 of section 48, for the word "exceeding" to the end of the section, the following be substituted:—

"exceeding one-fifth of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, by leave withdrew the following amendments:—

That in the event of his last preceding amendment not being carried, in clause (*a*) of section 48, line 2, for the word "registered" the word "written" be substituted.

That in clause (*a*) of section 48, line 3, for the word "fifty" the words "one hundred" be substituted.

That in clause (*b*) of section 48, for the word "twenty-five" the word "fifty" be substituted.

That in lines 4 to 7 of section 49, the words from "and after," &c., to the end of the section, be omitted.

That in the event of his last preceding amendment not being agreed to, in line 4 of section 49, the word "written" be omitted.

That in line 6 of section 49, for the word "six" the word "one" be substituted.

The Hon'ble MR. GIBBON moved that for section 49 the following be substituted:—

"An under-raiyat shall not be liable to be ejected by his landlord except—

"(*a*) on the expiry of the term of a written lease;

"(*b*) when holding otherwise than under the terms of a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

He said:—"The subject of sub-letting by an occupancy-raiyat to another person was found to be a difficult one in Committee. I contended we should give the under-tenant as much protection as it is possible to give him; that it is necessary when sub-letting that the agreement should be by written lease, not necessarily a registered one; that when an occupancy-raiyat sub-lets his lands on a verbal agreement the sub-tenant should, in the case of his landlord wishing to eject him, be entitled to hold at a judicial rent for three or five years, or that the sub-tenant should receive the same protection as is to be provided for the non-occupancy-raiyat under the Bill. But the Committee did not see their way to this; the only suggestion they adopted was that, when a sub-raiyat was let in on a registered lease, it should be for a term of years. I admit with reference to a sub-lessee that the Committee had given a sub-lessee on a registered lease every protection possible short of making him an occupancy-raiyat; he is to be let in for a term not exceeding nine years; the lease is also to be treated as an incumbrance on the holding. Under the present law sub-letting is not controlled and a sub-lessee receives no protection. If the tenant acts in collusion with the landlord, it is in the power of the occupancy-raiyat to dispute the sub-lease and avoid all liability: the occupancy-raiyat may surrender or abandon his holding, and the sub-lessee receives no protection. There are two kinds of sub-lessees; one is the capitalist, the other the poor raiyat; the capitalist has had every protection given him under the Bill, and the defects of the present law are as regards the capitalist sub-tenant to be remedied under the Bill; but the poor raiyat, who is let in on a verbal lease, except that he can only be ejected after six months' notice, receives no further protection. Section 48 provides that the landlord can only sue for a rent not exceeding 50 per cent. over his own rent if on a registered lease, and 25 per cent. if on a registered agreement; it is to this extent only that he gets protection. Occupancy-raiyats who sub-let on bhaoli agreements

give no written leases and may eject their tenants at pleasure under the Bill; if they hold their lands at a money-rental they might have to forfeit a portion of the outturn crop, but the hardship to the sub-tenant is the same. I propose that he shall only be liable to ejectment on the expiry of a written lease, or when holding on a verbal engagement, or on notice to quit served in the year previous to the one at the end of which he is to be ejected. This will in all instances insure him one year and a half's possession of the land. That is the least protection we can give him, for the poor raiyat is entirely dependent for his living on the property he holds, and we give him no protection except that of six months' notice; he should receive at least a year and a half's notice."

The Hon'ble MR. HUNTER supported the amendment:—He said:—"One of the acknowledged defects of the Bill as it stands is the scant protection which it gives to the under-tenant. The Select Committee clearly perceived this defect; but they did not so clearly see their way to remedy it. I regard my hon'ble friend's amendment as a fair and very moderate attempt to supply what I have always felt to be an omission in the Bill, its effect will only be to render the eviction of an under-tenant a somewhat more difficult and tardy process. I would press on those who have not hitherto seen their way to agree with my hon'ble friend and with myself in this matter, that the under-tenant is the tenant of the future throughout large areas of Bengal, that already his numbers have become a most serious problem, and that he is the only class of tenant for whom the Bill has failed to make any adequate provision"

The Hon'ble MR. AMÍR ALÍ also supported the amendment. He said:—"I think the reasons which have been advanced by the hon'ble mover of the amendment are very cogent, and it is unnecessary for me to add anything further."

The Hon'ble SIR STEUART BAYLEY said:—"I am very sorry I do not see my way to accept this proposal; the first part of the amendment I think unnecessary, as it is a part of the present law; if you hold under a lease you can only be ejected on the expiry of the lease. With regard to those who hold without written leases, the law provides for a notice of six months, and I do not think it is shown to be really necessary that we should give him 18 months' notice; on a notice of six months he should be able to move elsewhere and take up another holding."

The Hon'ble MR. GIBBON said in reply:—"With reference to a written lease, my reason is that that may be an inducement to holders to give written leases, so that they may at the end of the lease eject without notice, whereas without a lease they are bound to give notice. The giving of written leases should be encouraged as much as possible."

The amendment being put, the Council divided:—

| *Ayes.* | *Noes.* |
|---|---|
| The Hon'ble G. H. P. Evans. | The Hon'ble J. W. Quinton. |
| The Hon'ble H. St. A. Goodrich. | The Hon'ble Peári Mohan Mukerji. |
| The Hon'ble H. J. Reynolds. | The Hon'ble Rao Saheb Vishvanath Narayan Mandlik. |
| The Hon'ble W. W. Hunter. | The Hon'ble Sir A. Colvin. |
| The Hon'ble Amír Alí | The Hon'ble Sir S. C. Bayley. |
| The Hon'ble R. Miller. | The Hon'ble C. P. Ilbert. |
| The Hon'ble T. C. Hope. | Lieutenant-General the Hon'ble T. F. Wilson. |
| His Excellency the Commander-in-Chief. | The Hon'ble J. Gibbs. |
| His Honour the Lieutenant-Governor of Bengal. | |

So the amendment was agreed to.

The Council adjourned to Monday, the 9th March, 1885.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 9th March, 1885.*

## BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (2) of section 50 be omitted. He said:—"This sub-section is a reproduction of what is known as the rule of 20 years' presumption. It raises a presumption of fixity of rent in favour of all raiyats who might prove payment of rent at rates which have not changed for 20 years before suit. Such a rule might have been reasonable in 1859, when there was no complete Code of the Law of Evidence in the Indian Statute-book, and when proof of payment of a fixed rent since 1839 might have raised a presumption of possession since 1793. But what justification can there be for such a rule now that we have a Code of the Law of Evidence, which deals specifically with the subject of presumptions, and when proof of payment of rent at uniform rate since 1865 can reasonably raise no presumption whatever that the same rent had been paid since 1793? The injustice of this rule of presumption cannot be better shown than by referring to the fact that in a vast majority of cases landholders have been unable to rebut it. And yet of the thousands of cases in which it has been held by virtue of this presumption that the lands have been held at a fixed rent since 1793, a large majority must have been cases of holdings created subsequent to the days when from half to two-thirds of these provinces were barren waste. This was forcibly

shown the other day by the Hon'ble Mr. Reynolds by means of the statistics he produced of the enormous increase in the number of villages since 1793. Contrary, therefore, to its original scope and object, the rule has operated like a rule of prescription or limitation to create rights where none existed before. If the presumption was difficult to rebut in 1859, how much greater must be the difficulty as years roll on? A large majority of the landholders having come to the possession of estates by purchase at public sales, they have no means whatever at their disposal to rebut the presumption which the law raises in favour of the raiyat. In an enhancement-suit a raiyat has simply to set up a plea of fixity of rent, and in more than 95 cases out of 100, at least in Bengal, the plea prevails. Having been unable in most cases to get any records from the former proprietors, or to preserve them from the influences of climate when they get them, the landholders find themselves absolutely powerless to prove that a holding was created, or that the rent payable on it has changed since 1793. It is not because the provisions of the present law regarding enhancement of rent are unworkable, but because of the powerlessness of landholders to rebut the 20 years' presumption that there has been practically no enhancement by suit in Court since 1859. I will read to the Council the opinions of the Hon'ble Mr. Reynolds and of a few experienced judicial officers on this question. The Hon'ble Mr. Reynolds said:—

'Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent-receipts have been much more regularly given and much more carefully preserved during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption and more and more difficult to rebut it. Nor can it be denied that auction-purchasers labour under special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenants.'

"Mr. H. L. Dampier said:—

'The consideration of the 20 years' presumption is again invited by Government. I have given the question all the consideration of which I am capable, and I find no reason to depart from the views which I expressed at length in the report which I submitted to Government on the 19th May, 1881, on Mr. Reynolds' draft Bill. I then, after examining the question, said, in concurrence with the views then held by Mr. Reynolds, that on the whole I would accept 1839 as the starting point for the presumption, as being the most likely to bring the effect of the presumption into accord with the actual rights which it assumes.'

"Mr. E. E. Lowis said:—

'The 20 years' presumption may be abandoned. During the last 25 years the right to hold at fixed rates has been in most cases enquired into, and it would now suffice to call on all who have such a claim to register themselves once for all. This may lead to some present litigation, but the matter would be settled finally. To this arrangement the zamíndár could have no objection.'

"Mr. J. Tweedie said:—

'The presumption becomes year by year less likely to be true, and probable truth is the only justification for a legal presumption.'

"Bábú Nuffer Chunder Bhutta said:—

'The 20 years' presumption, indeed, works injuriously, especially as against auction-purchasers. Since the passing of Act X of 1859 it is now nearly 25 years; so that the owner of a holding that was created even within five years of the passing of that Act may now claim the presumption. In order to obviate this absurdity the period should be increased to, say, 30 years, so that it may be put beyond all doubt that the holding was in existence at least some time before the passing of that Act.'

"Bábú Sree Nath Roy said:—

'In cases of enhancement the question of the nature of the holding would invariably be put in issue, and the 20 years' presumption in favour of the tenant would be too strong for the zamíndárs to overcome True, this rule has been in force for the last quarter of a century, but experience tells us that there was scarcely a case of enhancement in which the plea of uniformity of rent for 20 years was not taken among others. If the present Bill passes into law without modifications, the natural consequence of this provision, as well as of certain others I have stated elsewhere, would be that measures will not be wanting to vary the rents or to concoct evidence to that effect, and nobody would know rest and contentment in consequence of the disputes and the litigations which would ensue.'

"Syed Moazzim Hossein said:—

'The retention of the 20 years' presumption rule (section 64, sub-section 2) is no longer necessary in these days. Since the passing of the Act of 1859 every raiyat is expected to be prepared with 20 years' rent-receipts and shift the onus on the zamíndár, who is hereby placed at a great disadvantageous position having to prove his case by production of collection-papers from the Permanent Settlement, which they might be at a loss to preserve. If the Court disbelieve them, there is no other means left to rebut the presumption. The rule, however, goes very harshly against those proprietors who have shown forbearance, particularly towards certain classes of landowners, such as widows, minors and auction-purchasers. The rate practically stops enhancement If, however, a presumption is to be retained, the period of 20 years should be counted from before the passing of Act X of 1859; otherwise there would be no end of litigation, and no end to the amount of fraud, perjury and collusion between raiyats and zamíndárs' agents, and this will prove highly injurious to the just rights and interests of landholders. It would be better to stop enhancement by law than to propose such changes, which will tend to no benefit of the landlord, and by which the raiyat will unnecessarily lose his time of cultivation and suffer in purse in the bargain.'

"More than two hon'ble members have spoken of the new facilities for enhancement of rent which the Bill gives to the zamíndárs. It would have been more correct to say that the rights of landholders had been in this respect seriously curtailed, and greater obstacles have been placed in their way than what existed at present. I need only mention the provisions about limitation of two annas in the rupee, the reduction of the increase by one-third in working out the rule of proportion, the material alterations made on the grounds of enhancement,

and the provision about progressive enhancements, to show what I mean. The landholders have repeatedly represented to the Government that they are perfectly satisfied with the principles of the present law on the subject of enhancement of rent, and that it is the rule of presumption which has hitherto practically barred all enhancement by suit in Court. The injustice of the rule of presumption is further clear from the fact that with all their prestige and influence, and with all the advantage they have over private landholders in the possession of a well-organised system of records, Government have always voided this rule of presumption as regards their own estates. The presumption is quite the other way as regards Government estates. There is not only no presumption of fixity of rent in any case, but the law also presumes that the assessments made by the Settlement-officer are just, and throws on the raiyat the onus of proving that they are excessive or unjust. The Bill has made no alteration whatever in the matter of this rule of presumption in the interests of private landholders, although it contains an express provision for exempting a majority of Government estates from its operation. To summarise my objections to this rule of presumption, I urge that it is opposed to the recognised principles of evidence; it has operated to deprive landholders of their just dues; it raises a presumption of fact which most landholders, and specially auction-purchasers, find it impossible to rebut; it is condemned by experienced judicial officers; and, lastly, that the desire of Government to exempt their own estates from its operation clearly shows its injustice."

The Hon'ble Mr. Quinton said:—"I think in the presence of His Honour the Lieutenant-Governor and the Hon'ble Mr. Reynolds it will be useless for me to make any remarks on the conditions and status of the Permanent Settlement in Bengal. But with regard to the particular objection that Act X of 1859 protected from enhancement rents which remained unchanged from the time of the Permanent Settlement, I may say that that provision has never been objected to as other than equitable, and we have heard in the discussions which have taken place on this Bill several times that it gives rights to a large number which it is practically impossible for the people to obtain, and is likely to lead to a state of mind and temper in a law-abiding people which might induce them to leave off submitting their claims for the decision of the Courts and to resort to other means of obtaining justice. These considerations were no doubt present in the minds of the framers of Act X of 1859 when they enacted that a tenant who held at an unchanged rate of rent since the time of the Permanent Settlement should be protected against enhancement, and they went on to add that he should not be required to prove that there never had been any change in his rent during the first 70 years fom the date of the Permanent Settlement till the passing of Act X of 1859. If they allowed any such provision to remain unqualified in the Act, it would be nothing more than a dead-letter. Therefore they said that in order to establish the right, if the tenant could prove that he had held at the same rent for 20 years, then the presumption should arise that he held at such rent from the time of the Permanent Settlement. But until he proved that he had so held for 20 years the presumption did not arise; and if the landlord could prove that in one single year from the time of the Permanent Settlement, there had been a *bonâ fide* change of the rent, the presumption would be rebutted. This provision must appear to any one to be a perfectly reasonable one, and I am glad to hear the Hon'ble member admitted it was when that Act was passed. This section does therefore but continue that principle of law in the same manner as the principle in English law that a thing is beyond legal memory when it happened at a time when the memory of man runneth not to the contrary. This shows that such a presumption is not so contrary to all principles of equity and justice as the Hon'ble member has stated.

"At the time when the Act was passed it was extended to the North-Western Provinces, five districts of which were wholly or partly under permanent settlement, and this provision was, therefore, in force there. In 1873 a fresh rent law was enacted for the North-Western Provinces, and these provisions were continued in that law. Again in 1881 the rent law of the North-Western Provinces came under revision, and the same provisions were again re-enacted. So that I may say that the legislature in India adopted the principle 25 years ago and re-affirmed it on at least two occasions since. In the same way we held that it would be unreasonable to require a raiyat to prove 12 years' continuous occupancy in the same tenure, and we therefore raised a presumption in his favour which the landlord could rebut. Under these circumstances I do not see how the presumption can be criticised in such unqualified terms of condemnation as the hon'ble member has used. He says many judicial officers have stated that it works hardly on the landlord; the tenant has got to prove that he has held for 20 years at the same rent; whereas the landlord has only got to prove that the rent has been changed during one single year. If the landlord has failed to prove this, on what ground can it be said that the presumption works hardly on him? If the landlord has failed to prove this, is it not fair to suppose that the presumption that the rent remained unchanged from the time of the Permanent Settlement is in accordance with the facts? I do not understand how the argument brought forward by the hon'ble member can be admitted. I have no doubt the Hon'ble Mr. Reynolds and His Honour the Lieutenant-Governor will supply any omission which there may be in my answer when applied to the circumstances of Bengal. I can only say that I cannot see the force of the argument."

The Hon'ble Mr. Reynolds said:—"As the hon'ble member has referred to an opinion which was formerly expressed by me, I should like to be permitted to say that fuller reflection has satisfied me that my opinion was a mistaken one. I was right in saying that in many cases in which the presumption had been used against auction-purchasers it had effected what not intended by the original framers of the rule; but I failed to take sufficiently into consideration the vast majority of cases which were never brought to trial, because the existence of the

presumption had deterred the landlord from venturing to raise the question. In those numerous cases I believe great hardship and injustice would be done to those who were in the minds of the framers of the rule, and who, if the law were now altered, would be quite unable to show that they had held their lands at rents which remained unchanged from the time of the Permanent Settlement. The number of such cases is very great, and I think the injustice which the proposed amendment would cause ought to deter us from making any change. The Hon'ble member has referred to my opinion and those of some officers, but I should find no difficulty in bringing quite as many opinions against any change in this provision. Then, as to the statement which has been made that the Government keeps itself clear from the operation of the rule and does not allow the presumption to be raised in its estates, I am not aware what justification there is for that statement: I do not think there is anything either in the present law or in the Bill which exempts Government estates from the operation of the rule. But the presumption does not naturally arise in the case of temporarily-settled estates. In permanently-settled estates, where the raiyat has shown that his rent has remained unchanged for 20 years, the presumption arises that he has held at such rent from the Permanent Settlement. But in estates where the revenue has been periodically altered, the revenue being based on the rent, the presumtion is not that the rents have been unchanged but that they have been changed. If a tenant in a Government estate can show that his rent has remained unchanged for 20 years, the presumption would apply to him, and he would be entitled unless the presumption were rebutted, to continue to hold at that rate. But the great mass of raiyats in Government estates would be unable to establish any such claim, because the fact of periodical changes in the revenue is in itself a presumption that the rent must have varied."

The Hon'ble Mr. GIBBON said:—"If this is a Bill, which it is presumed to be, to remedy the wrongs which were committed under previous legislation, I am strongly of opinion that the presumtion, as it stands in the Bill, should be modified or it should be omitted altogether. If the wrongs of the raiyats are to be remedied, so ought the wrongs of the landlords. It is a wrong to give any one class of occupancy-raiyats any privilege which their brother raiyats do not possess; and that wrong Act X of 1859 committed. I believe that it was never intended at the time of the Permanent Settlement to allow any class of raiyats to hold their lands at fixed rents—certainly not to afford them the means of acquiring such a right in the future. Section 60 of Regulation VIII of 1793, on which most people who have claimed such a right for the raiyat base their claim, says distinctly that the section shall not apply to Bihár; therefore, if the Regulation on which the claim is based makes a distinction between Bengal and Bihár and exempts Bihár from its operation, nothing in that section could have intended that any class of raiyats in Bihár should hold at fixed rates. Under this Bill we are making the right to hold at fixed rates more valuable than it is at present; we are allowing the raiyat to acquire rights under this presumption which even Act X of 1859 never contemplated. We are allowing the raiyat the right to sell, the right to sub let, guarding him against his sub-lessee acquiring rights under him. We are allowing him to destroy the land to build on it and to do whatever he likes with it; we are making him the actual proprietor of the land and his position a more enviable one than that of the zamíndár. I think it, however, impossible to do away with this section altogether. Vested rights have accrued which cannot be set aside, but we can avoid allowing a raiyat to acquire rights in the future that he does not possess at present. I therefore think the hon'ble member's second proposal is a sound one, namely, that the presumption should run from a fixed date, to eliminate its accumulative property. But the hon'ble member also proposes to set aside the presumption with regard to tenures, as well as with reference to raiyats; there I think he is wrong, for under the Permanent Settlement Regulations istimrári and other tenures existed and had such rights."

His Honour THE LIEUTENANT-GOVERNOR said:—"The hon'ble member in supporting the amendment which we are considering has based his argument on the fact that there is a preponderance of opinion amongst those who have been consulted against the justice of this presumption. I contest that statement. We took a good deal of trouble to analyse the reports when we submitted to the Government of India the letter of the 15th September. In that letter we showed that the result of the examination of the different opinions which came before us was that there is a very large majority in favour of retaining the presumption. The Commissioners of Patna, Burdwan, the Presidency Division and Dacca were unanimously in its favour. With regard to the judicial authorities on whose opinions the hon'ble member relies, I find it stated that a very few would annul it altogether; a larger proportion would modify it, but a still greater number would retain it. There is also the strong opinion of the Native Judge of Burdwan, who said that the rule had worked remarkably well since 1859 without putting any hardship on zamíndárs. Therefore I contend the authorities are against the hon'ble member. It has been said that the burden of proof lies upon us to establish the equity of this rule of presumption. But the fact is that the rule finds a place in the law as it stands, and it devolves upon those who are opposed to it to give more than general grounds for its abolition.

"The hon'ble member then goes on to speak against the good faith of the Government with regard to the management of its own estates. The other day he told the Council that though the Government are limiting the power of enhancement in the case of zamíndárs we take care not to bind ourselves by any rules of limitation, and he quoted a number of Khás mahals in which enhancement of revenue or rent had been excessive. Whatever may have happened before this Bill becomes law is not in point. When this Bill is law the Government will be bound by it exactly in the same way as the zamíndár will be bound. But as regards the particular cases to which he alludes, I would point out that the hon'ble member failed to refer to a fact, which will remove the whole gravamen of the charge, that the enhancements

in a majority of those cases were of *dearah* lands in which the area of cultivation had increased, and which would therefore naturally come under assessment. That is not enhancement properly so-called, but simply the assessment of rent on an increased area of cultivation. My hon'ble friend Mr. Reynolds has already to some extent answered the charge that the Government takes care to protect itself against the operation of the rule of presumption, and I may add that I really do not know what justification the hon'ble member has for the statement which he makes. He brings forward no instances in support of his charge, but only makes a general statement to that effect. I can say against him only this, that the other day in the particular case of enhancement with regard to the Malinagor village in the Poosa estate, to which the attention of the Council has been more than once directed, where the tenants stated that they had held for 20 years at a uniform rate of rent, that plea was sustained against Government by the Munsif, who threw out all the cases. If the hon'ble member is still determined to press his amendment for the omission of a rule of law the retention of which most of the authorities have recommended, I shall certainly oppose the motion."

The Hon'ble SIR STEUART BAYLEY said :—"I cannot recommend the Council to accept the proposal for the abolition of this rule of presumption. I have to deal now with the arguments on which the proposal for abolition is sustained, not with any suggestion which may be made for its modification. I do not think the question of the abolition of the rule is within the range of practical politics. The hon'ble gentleman first based his argument for abolition on the ground, as he led the Council to suppose, that the majority of opinions was against it; but, as has been pointed out by His Honour the Lieutenant-Governor, the majority of opinions is not against it. In quoting these opinions the hon'ble member, as the Lieutenant-Governor pointed out, omitted to mention the fact that the Conferences of Burdwan, of the Presidency Division, of Dacca, of Patna and Orissa are in favour of retaining the rule. Again, as regards the opinions of judicial officers, of which he made a good deal, the tendency is in the opposite direction to what he led the council to suppose. Bábús Mohendro Nath Mittra, Banimadhub Mittra, Amrit Lal Chatterjee, Mohendro Nath Bose, Jogodishvar Gupta, Bipin Chunder Rai, Khetter Prosad Mukerji, can all be quoted as judicial officers who are in favour of retaining the presumption as it stands, and I can show that a very large majority of them are against abolishing it altogether. Then he said that the vast majority of estates since this presumption became law have changed hands by the operation of the sale law. I cannot conceive what has led the hon'ble member to suppose so, for I find that the average annual number of estates sold in Bengal is one out of every 245, and in the course of 20 years that would not make one-tenth part, much less a majority. I should like to know on what authority he says that 95 per cent. of the estates have changed hands. I can only say that that statement is not borne out by the papers before the Council. But I was still more astounded by the assertion that the Government has made a special law in its own behalf, and has thought fit to exempt its own estates from the operation of this principle. That is not the case. What the Government has done, as the Hon'ble Mr. Reynolds has explained, is to maintain the existing law to the effect that in temporarily-settled estates this presumption does not arise, for the simple reason that where there are periodical alterations of revenue, involving periodical settlements of rent, the presumption is that the rent has not remained unchanged. If, however, a man can prove that he has held at a fixed rate from the time of the Permanent Settlement, his rent cannot be altered; but in regard to this presumption there is absolutely no distinction at all between Government and other estates. There are temporarily-settled estates which are not the property of Government. No distinction is made between these particular estates and temporarily-settled estates under the Government, and, where the Government is the holder of a khás mahál which is permanently settled, there is similarly no distinction whatever between them and zamíndári estates. The whole foundation of the hon'ble member's statement is absolutely incorrect, and, when he goes on to say that the Government in its settlement-proceedings has got enhancement by throwing on the raiyats the burden of proving in the Civil Court that they held from the time of the Permanent Settlement, though the statement is true as to the past, it is grossly misleading, for the hon'ble gentleman has omitted to point out that under this Bill the Government deliberately abolish the old law and the special privileges they had under it, and put themselves in regard to settlement-proceedings exactly on a par with all other landlords."

The Hon'ble MR. ILBERT said :—"I agree with the majority of the Rent Commission and of the Select Committee on this Bill in thinking that this presumption ought to be retained. I am in favour of retaining it for very much the same reason as that for which I was in favour of the prevailing rate as a ground of enhancement. The twenty years' presumption is as valuable to the tenant as the prevailing rate is to the landlord, and in neither case am I disposed to remove a provision of the existing law merely because its form is capable of being described as embodying an element of fiction. The presumption arising from holding for twenty years at a fixed rate of rent is, as has been pointed out, not unlike the well-known presumption which is created by the English common law, and under which, when it is proved that a man has enjoyed rights of a particular class for twenty years, it is presumed in his favour that he has enjoyed the rights for a period whereof the memory of man runneth not to the contrary, that is to say, for a period which, according to English lawyers, commences at a point either at or near the beginning of the reign of Richard I—a date which, I need hardly say, is anterior to the Permanent Settlement. It must be borne in mind that the effect of a presumption such as this is merely to determine the point at which the burden of proof is shifted from one party to the other. Before a raiyat can obtain the benefit of this presumption

at all, he must prove that his rent has not been changed for twenty years; it is not until he has discharged this burden of proof that the presumption comes in."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said in reply:—"It is a duty I owe to myself that I should state emphatically that when I quoted the opinions of some judicial officers with reference to the harsh working of this rule of presumption I did not say that they represent the majority of opinions on the subject or that there was a preponderating opinion in favour of my proposal. I simply said that there was a number of opinions of judicial officers in support of my view. Again, I am sorry that His Honour the Lieutenant-Governor should have thought that I mentioned the fact of the exemption of Government estates from the operation of this rule of presumption as something against the good faith of the Government. I used the fact simply as showing very clearly the injustice of this rule of presumption—not that the Bengal Government or any Government has taken advantage of an exceptional rule for its own interested purposes, but that, knowing that the application of the rule to Government estates would seriously jeopardise their interests by creating new rights where none existed before, the Government has taken care to exempt its own estates from the operation of the rule of presumption. It was said by the three hon'ble members who have spoken on the subject that I have no warrant for the statement that the rule of presumption does not apply to Government estates. I shall read to the Council the first line of a section which contains this rule. When Act X of 1859 was passed this rule was contained in section 4 of that Act. It said, 'Whenever in any suit *under this Act* it shall be proved'; and when Act X of 1859 was repealed by Bengal Act VIII of 1869 the very same words were reproduced. Can it for a moment be contended that settlements in Government estates were made under those Acts? It is not Regulation VII of 1822 and Bengal Act III of 1878, and after that Bengal Act VIII of 1879, which give the law for the settlement of rents in Government estates; and is there a single provision in those laws similar to the rule of presumption contained here? Again, it has been observed by His Honour the Lieutenant-Governor that I did not state to the Council the other day, when I gave the Council the result of my calculations as to the increase of so many annas in the rupee, that those settlements referred to *dearah* settlements. I took those figures from the Administration Report of the Bengal Government, and there is nothing in the chapter from which the figures were taken to show that they referred to *dearah* settlements. The chapter is headed 'Re-settlements,' and I had every right to draw those conclusions when I gave the arithmetical calculation of the amount of increase over the former revenue."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 50, sub-section (2), lines 5 and 6, for the words "during the twenty years immediately before the institution of the suit or proceeding" the word and figures "since 1839" be substituted. He said:—"As my amendment for the omission of the section has been lost, I propose this amendment with a view to meet the grievance which I presume to think the zamíndárs have clearly made out. I think it will be fair and just if the raiyat has to prove that he paid rent at a uniform rate since 1839, that is, 20 years before the passing of Act X of 1859, as was originally recommended by the Hon'ble Mr. Reynolds; and I also beg to move that in sub-section (4), after the word 'apply' the words and figures 'to an estate or tenure sold by public auction since 1859 or to' be inserted. This forms part of the amendment which was originally recommended by the Hon'ble Mr. Reynolds. If it be not desirable to do away with the rule of presumption altogether, it should be so modified as not to apply to auction-purchasers, and only to cases where uniform payment has been proved from 1839."

The Hon'ble MR. REYNOLDS said:—"I do not think the hon'ble member should again have quoted me after I had recanted the opinion I formerly expressed and told him why I believe I was then wrong. I think the two amendments now proposed will have a harsh and injurious effect, because a large number of tenants who may have thought themselves safe in preserving their receipts for twenty years would now be called upon to produce their receipts from the year 1839. When the conditions referred to in another part of the Bill are fulfilled, when there is a law requiring tenures to be registered in a public office, or a record-of-rights has been made in respect of any local area, then, and not till then, this presumption can be abolished without any danger."

The Hon'ble SIR STEUART BAYLEY said:—"I wish to point out an obvious objection to this amendment. The hon'ble member would exclude from the benefits of this presumption the raiyats of any estate which has been sold by auction. In such cases a raiyat, having kept his receipts and proofs for a period of 20 or 30 years, will fail to have the benefits of this rule of presumption, because his landlord chooses to default and the estate is sold and he will then no longer be entitled to the benefits which the law since 1859 has secured to him. I ask whether it is reasonable or right that the status of a raiyat should be changed if the estate has changed hands. I do not think anybody would say that."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (4) of section 56 be omitted. He said:—"I consider the provisions of section 58 contain sufficient penalty for defective receipts. If a landlord refuses to give, or does not give, a receipt in the proper form giving all the particulars required, he will be liable under that section to pay to the tenant double the amount of rent paid by him. But this section provides, in addition to that penalty, a presumption in favour of the raiyat to the effect that where the landlord gives a defective receipt it will be presumed to be in full discharge of all demands from the tenant up to the date of that defective receipt; so that the penalty for giving a defective receipt is greater than for a refusal to give a receipt, although the defect in the receipt might have arisen from ignorance

or oversight or carelessness of the zamíndár's agent. I submit that there is no necessity for this provision, because section 58 provides for such cases."

The Hon'ble SIR STEUART BAYLEY said:—"The necessity for this provision has been felt all along. It was started with the idea of requiring receipts to contain certain specific information, which was contained in a recommendation made by the Bihár Committee, who remarked very strongly about the way receipts were kept and presented in Court; and they insisted upon the necessity of the receipts giving certain specific information, and on their being kept in counterfoil. This recommendation was afterwards considered by the Rent Commission, and they came to the same conclusion. As the provision first stood in the Bill it was a great deal more stringent than it is now: the giving of a defective receipt was of itself to operate as a discharge in full up to the date of the receipt; the presumption now given is nothing if the zamíndár can show that the receipt is not an acquittance in full, or that the particulars required have been *substantially* given. It will only be in the case of wilful omission that the presumption will arise.

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (*1*), for the words "six months" the words "three months" be substituted. He said:—"I would call the attention of the Council to the change about to be made by this section in the law. The present law provides that if a landlord withholds a receipt he shall be liable to damages, the present law presumes intent to defraud by withholding a receipt, but this section enacts that if a landlord refuses *or neglects* to deliver a receipt he shall be liable to severe penalties. The proposed section punishes for neglect to deliver, for laziness, forgetfulness, on the part of the landlord. The raiyat may bring his rents but fail to bring the account on which the payment is to be entered with him, and yet the Bill will punish the landlord for neglect to deliver. It is impossible for any landlord to prove he has delivered a receipt. I know from my own experience the difficulty of inducing raiyats to receive receipts; they see the amount credited in their account and then they disappear. It is in fact often impossible to give receipts, and this Bill puts further difficulties in their way. It gives the landlord no facilities for delivering receipts, and the only way in which he can possibly give it is by sending it to the tenant in a bearing cover which will cost him two annas. The withholding of a receipt with intent to defraud should be punished by law, but it is very necessary that the party aggrieved should be obliged to appeal to the Court as soon after the payment is made and the receipt withheld as possible to enable the Courts to judge fairly between them. I have simply provided that the term for instituting a suit under this section should be shortened, so that if the landlord does neglect to give or does withhold a receipt with attempt to defraud, he should be sued without any unnecessary delay.

The Hon'ble SIR STEUART BAYLEY said:—"I have no particular feeling in this matter: I can only say that the term of six months was fixed in Committee after a good deal of discussion."

The Hon'ble MR. HUNTER supported the amendment. He said:—"I think the clause as it stands will place a difficulty in the way of the landlord, and I do not think the proposed amendment will be in any way adverse to the interest of the raiyat."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 58, sub-sections (*1*) and (*2*), after the word "landlord" the words "after demand by letter duly registered under the Post Office Act" be inserted. He said:—"It is necessary for the ends of justice that before a raiyat is allowed to sue his landlord for a penalty of double the amount of the rent, on the ground that the landlord has refused to give a receipt for the sum paid, there should be a provision in the section for a demand on the landlord in such a way that there should be no reasonable doubt as to the demand having actually been made. As it is, the section will afford very great temptation to the raiyat, after he has paid rent, to refuse to take a receipt, and then resort to the Court to recover double the amount; he has simply to tell the Court 'I paid a particular sum; I asked for a receipt and did not get it; and I claim double the amount as a penalty.' I submit that some provision is necessary for the purpose of giving the landlord some protection against false claims for penalty."

The Hon'ble MR. REYNOLDS said:—"I am not in favour of this amendment, and I would remind the Council that the hon'ble member in speaking on section 56 said that the last clause of that section might be removed because section 58 provided a substantial remedy. But this amendment would really cut out all certainty from section 58, because, although it is reasonable to say that a demand should be made before the raiyat goes to Court, it will be impossible for the raiyat to prove that he made the demand by registered letter, inasmuch as he will be unable to show what the contents of the letter were, I therefore cannot support the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"This proposal was moved in Committee, but was not accepted. I have a good deal of sympathy for landlords in respect to this matter, but I think the hon'ble member's amendment will scarcely secure the proof of the demand having been made, which is what he desires. A registered receipt proves nothing beyond the fact that a letter was posted: it is no proof of the contents of the letter. I think the contention of my hon'ble friend is a sound one."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The simple posting of the letter would, under the Evidence Act, be a presumption of the letter having been delivered, and a copy of the letter might be produced along with the post office receipt."

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (2), the words "the receipt in full discharge or" be omitted. He pointed out that the wording of the Bill was ambiguous, and if the hon'ble member in charge of the Bill could see his way to altering the draft of the sub-section a little, MR. GIBBON would withdraw his amendment.

The Hon'ble SIR STEUART BAYLEY consented, and the Hon'ble MR. GIBBON's amendment was then withdrawn.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (3), line 3, for the word "shall" the word "may" be substituted. He said:—"The sub-section says that if a landlord fails to prepare and retain a counterfoil copy of a receipt or statement as required by either of the said sections 56 and 57, he 'shall' be punished with a fine which may extend to fifty rupees. My object is to make the sub-section permissive and to allow the Courts to exercise some discretion in the matter. There may be many reasons why the landlord may not be able to give a counterfoil receipt or retain a counterfoil copy of a receipt. Section 59 provides that the Government shall supply receipts in printed books. Suppose none are in stock and the landlord not able to procure them. The landlord would in that case be fined fifty rupees in each case; the Courts would have no option but to fine him. It has been said in defence of this section that the Courts may give nominal damages. The Bill now subsitutes a penalty for damages. In all cases that a penalty is inflicted and in most cases of damages the penalty carries costs—in themselves a severe penalty. I therefore wish to give the Courts a discretionary power, so that if the landlord is not to blame he should not be punished."

The Hon'ble SIR STEUART BAYLEY said:—"I understand that the wording of this section is adopted from the Penal Code, and there may be a strong objection to alter it; but I think the hon'ble member's objection may be met by inserting the words 'without reasonable cause' after the word 'neglects,' and I have no objection to do so."

The Hon'ble MR. GIBBON accepted this suggestion and withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY then moved the following amendments:—

(1) that in section 58, sub-section (1), line 1, after the word "landlord" the words "without reasonable cause" be inserted;

(2) that in section 58, sub-section (2), lines 1 to 3, for the words "If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or" the words "If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge, or, if the tenant is not entiled to such a receipt," be substituted;

(3) that in section 58, sub-section (3), line 1, after the word "landlord" the words "without reasonable cause" be inserted.

The amendments were put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 61, sub-section (1), clause (b), be omitted. He said:—"Where the landlord or his agent refuses to accept rent when it is tendered, it should justify the deposit of rent in Court; but where rent was refused several years ago by reason of a dispute as to the amount of rent, or where the question in dispute was as to the right of the party who tendered it, there is no reason why, after such dispute has been amicably settled, that rent should be refused for all time to come. The law should not justify the deposit of rent in Court on the ground that the raiyat had reasonable ground to suppose that the rent would not be received."

The Hon'ble MR. REYNOLDS said:—"I do not think this objection can be raised on the wording of clause (b). The hon'ble member referred to a dispute which had since been amicably settled, but what the clause provides for is a case in which the tenant has reason to believe that, owing to a tender having been refused on a previous occasion, the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it. That presumes that the cause of dispute is still in active operation, and it seems to me that in such cases the tenant should be at liberty to deposit the rent in Court."

The Hon'ble SIR STEUART BAYLEY said:—"The clause as it now stands was the subject of a good deal of dicussion in Committee, and has undergone a considerable amount of alteration. It was explained fully in the statement of Objects and Reasons, and the Committee thoroughly considered the representations of both parties. The tendency on the one side was to let the raiyat deposit money in Court when he liked, and on the other to insist on the raiyat tendering the amount at the zamíndár's kachahri. The zamíndárs objected to this provision, because they, or at least their amlá, are unwilling to lose the enormous hold over their raiyats which the necessity of personally appearing at the zamíndár's kachahri gives to them. Formerly they had the legal power of arresting a raiyat and forcibly bringing him to the kachahri. When Act X of 1859 abolished that power they declared it would be ruinous to them, and it is the same feeling which prompts them to desire the attendance of the raiyat on all occasions. The feeling is a very intelligible one, for it is by this means that an underpaid body of amlá secure their perquisites; but, on the other hand, there was also a very intelligible feeling that so long as payment of the rent is secured the raiyat should not be forced to submit to an ordeal of the dangers of which he has already had experience. We have modified the section a good deal. As it stood last year it was more in accordance with the amendment which the Hon'ble Amír Alí thinks necessary; the raiyat would then be the sole judge practically whether the dispute with the landlord is a sufficient ground for depositing the rent in Court. As the section stands, the ground on which this privilege is now given to the raiyat is that rent has been refused on a previous occasion, and we have given a discretionary power to the Court to grant or to refuse the application. Under these circumstances I think the landlords' rights are sufficiently guarded."

The amendment was put and negatived

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in section 61, sub-section (*1*), clause *(b)*, line 3, after the word "owing" the words "to any existing dispute or" be inserted. He said:—"The intention of my hon'ble friend is to meet a certain class of cases which sometimes occur in Eastern Bengal. Cases may arise in which it might be very difficult and a little dangerous for the raiyat to go near the office of the zamíndár, and he thinks that in such cases tenants should be protected from the necessity of going near the office—an office in which he is likely to receive rough treatment. He therefore proposes this amendment."

The Hon'ble SIR STEUART BAYLEY said:—"As we have accepted the decision of the Committee against an alteration in an opposite direction, I think we ought also to retain the decision of the Committee against any alteration in this direction."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY moved that in section 65, line 1, before the word "tenure-holder" the word "permanent" be inserted; and that in section 66, sub-section (*1*), lines 3 and 4, for the words "in respect of the holding of a non-occupancy-raiyat or an under-raiyat" the words "from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat" be substituted.

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that to section 74 the following *exception* be added:—

"*Exception.*—Bonus or salámí paid to the landlord by the raiyat in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do shall not be deemed an imposition within the meaning of this section."

He said:—"The principle of this amendment, if I recollect right, was not objected to by the Select Committee when the question was discussed. Considering the very heavy penalties which the section imposes for the collection of any sum over and above the actual rent, it is, I think, necessary that an *exception* of this kind should be expressly inserted in the Bill for the purpose of giving protection to the landlord in those cases in which he receives a bonus or salámí from the raiyat for allowing him to do what he otherwise would have no lawful power to do; as, for instance, when the landlord allows the raiyat to make an excavation and take earth for making bricks. In such cases the salámí which the zamíndár gets from the raiyat should be exempted from the operation of this section."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter."

The Hon'ble SIR STEUART BAYLEY said;—"We have considered the matter. We think there is no objection to the principle which the amendment lays down, but we are very much afraid of its practical operation. The substantive law has been kept as it is, and the old rulings will be applicable to it. Whatever is not illegal now will not be illegal under this Bill; what is illegal now will continue to be illegal still. We have not ventured to touch the section, and for this reason I think it would be unwise to put in the proposed *exception*."

The amendment was put and negatived.

The Hon'ble Mr. GIBBON moved that section 75 be omitted. He said:—"The section will, I believe, be practically inoperative in 99 cases out of 100 where it is really required, and act harshly in others where it is not necessary. The cases intended to be got at are cases in which the landlords take abwábs and cesses in lieu of enhancement of rents, and for this purpose the previous section is sufficient. Where the raiyat actually gives them of his own free accord, where they are not exacted but given in lieu of benefits received, this section as it is worded will be inoperative. Exaction means extortion; it implies a certain amount of pressure or restraint. The present law gives damages for extortion; the North-West Act awards compensation for extortion by illegal confinement or duress. This section says the raiyat may sue for a 'penalty' for exaction without declaring what is to constitute exaction. There is a great difference between allowing an injured person to sue for damages and to sue for a penalty. Penalties should in all instances go to the Crown and not to the raiyat; if the raiyat is injured bodily, the Criminal Code should be sufficient to protect him. Damages would be sued for in proportion to the injury suffered. Under this section a raiyat must in every case sue for the whole amount of the penalty. He should not be encouraged to bring a civil suit for Rs. 200 and hope to receive it by way of damages where the actual loss suffered will in most instances be very slight."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I agree with the hon'ble mover of the amendment."

The Hon'ble MR. REYNOLDS said:—"Under the present law the raiyat is entitled to sue for damages, but he cannot recover more than double the amount exacted from him. In such cases the landlord takes a comparatively small sum from each of a large number of raiyats, and it seems a mockery to tell a raiyat from whom a sum of Rs. 2 has been exacted that he may sue his landlord with the prospect, if successful, of recovering double the amount. As to the necessity for the section I may refer to the details of a case which has reached me within the last few days in connection with the Patwárí Bill now before the Bengal Council. That Bill proposed to levy a patwárí cess on the land, to be paid in the first instance by the zamíndár, and to give power to the zamíndár to recover the cess or a certain proportion of the cess from his under-tenants. In his latter, Mr. Stevenson, a missionary in the Sonthal Parganás, expresses a strong hope that that procedure will not be adopted, and he remarks that the

opportunities which will be given by the Bill will be availed of for the purpose of extorting from the raiyats much greater amounts than the authorized cess. He gives a concrete example, and says:—

'As an example of how zamíndárs as tax-collectors act, I may mention a case the facts of which are before me at present. *K. M.* of the village of *P.*, of the *P.* zamíndárí, whose annual rent is Rs. 34-10, was asked by his zamíndár to pay Rs. 5-6-9 as cesses for the year. On behalf of the raiyat I asked for an explanation of the particulars of the cesses. The explanation given was that there are three cesses to be paid—(1) the road cess, which is two pice in the rupee, but charged on double the rent; (2) the public works cess, also two pice on double the rent; and (3) a rigwari tax, two pice in the rupee on the rent. In this way this raiyat was being made to pay 2½ annas in the rupee on his rent.'

"In this instance the missionary personally interceded for the raiyat, who is possibly a Native Christian, and got the exactions remitted: but he says this case is only an illustration of what is going on all around. That I think is a very strong instance of the necessity for some substantial punishment in cases such as are provided for by this section. The raiyat whose rent was Rs. 34-10 was required to pay Rs. 5-6-9 as cesses for the year. The amount which could be legally claimed from him was 18 annas, and the rest was an illegal exaction. I see that Mr. Stevenson says that it is useless to tell the raiyat that he has his remedy by going into Court and suing the zamíndár for double the amount of the exaction. Therefore I trust the Council will agree that this section, which provides a penalty of Rs. 200, ought to be retained."

The Hon'ble SIR STEUART BAYLEY said:—"I agree with my hon'ble friend Mr. Reynolds that the penalty should be substantial. The old power of suing for damages of double the amount of the exaction is obviously useless, as it has failed to be of any effect. The hon'ble mover of the amendment argues that this penalty being by way of punishment it ought to go to the Crown, but I do not see why the raiyat ought not to have the power of suing for penal damages. The levy of two annas or four annas from a man is not a very serious thing, but it is a matter of public policy to put a check upon these exactions. With regard to the particular sum inserted, I may remind the Council that in last year's Bill it was Rs. 500, and it was reduced to Rs. 200 on the motion of the Hon'ble Mr. Gibbon; but I cannot agree that the penalty should be omitted altogether."

The Hon'ble MR. GIBBON said:—"I cannot agree with the hon'ble member in charge of the Bill. On the contrary, the whole of the hon'ble member's statement goes to prove, as I have asserted, that in the majority of cases what this section is intended to hit it does not hit. I quite agree that where a man has exacted payment of any excess, that is, where force has been used, the raiyat should be allowed to sue for damages without limit, but all sums levied by way of penalty should go to the Crown. A man might pay a cess to the zamíndár for four or five years, and at the end of the fifth year he may sue under the Bill for Rs. 200 as damages."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 77 be omitted. He said:—"I do not object to the principle of this section. I think that a raiyat whose rent is fixed in perpetuity should have a right to make such improvements as are allowed by the law without any reference to the landlord. But there are two difficulties in the way by reason of which I think this section should be omitted. In the first place it will be a very difficult matter to determine whether a raiyat holds at a fixed rent or at a fixed rate of rent. If the question is referred to the Collector under sub-section (*3*), the Collector will have to raise a side issue in the first instance and decide the very important question as to whether the raiyat holds at a fixed rate of rent before entering upon the question referred to him, namely, whether the raiyat has the legal right to make the improvement against his landlord's consent. On these grounds I submit that the section should be omitted."

The Hon'ble SIR STEUART BAYLEY said:—"Recognizing, as we do, the force of a good deal of what the hon'ble member has said about the undesirability of raising such an important question as whether a raiyat holds at a fixed rate of rent by a side issue, we are prepared to accept the amendment, namely, to omit section 77, and to give raiyats holding at fixed rates the same rights to improve as an occupancy-raiyat. I shall therefore move in section 78 that the words 'holds at fixed rates or' be inserted. I propose this without prejudice to the substantive amendment of the hon'ble member."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the words "holds at fixed rates or" be inserted after the word "raiyat" in line 1 of section 78.

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 78, sub-section (*2*), line 2, for the word "raiyat" the word "landlord" be substituted, and that the words beginning with "unless" in that sub-section be omitted. He said:—"Where both the raiyat and landlord desire to make an improvement, I submit that the landlord should be given a preferential right to make the improvement. In the first place what the raiyat may consider to be an improvement as regards his own holding might not be an improvement as regards the holdings of his neighbours. If the improvement which the raiyat proposes to make, although it may be beneficial to his own holding, is prejudicial to the holdings of other raiyats, the landlord has a right under the Bill to prevent it. It is with the view of preventing disputes between neighbouring raiyats that I think it very deisirable that the landlord, whose interest it is to do common justice, should have a preferential right to make an improvement where the improvement is desired by the raiyat, instead of the raiyat being allowed a preferential right to do so against the wish of the landlord."

The Hon'ble MR. REYNOLDS said:—"I think the section embodies the proper rule, and a good deal of the objection which has been raised is provided for by the concluding words of the section, which says 'the raiyat shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord.' Where it does not affect other holdings the Bill provides that the person who is primarily interested in the improvement shall have the preferable right to make it, and this is certainly the case with regard to a raiyat holding at fixed rates, whose stake in the land is very considerable. The same remarks apply, though in a less degree, to an occupancy-raiyat. Such a man should not be prevented from making an improvement because the landlord expresses a wish to have the first right to do so. I think the Council should not agree to the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The question of improvements is one which is really as regards occupancy-raiyats more of theoretical than practical value. As long as the occupancy-raiyat is not ejected for arrears of rent, compensation for improvements will not have to be paid, and so long the landlord will not trouble himself very much as to whether the raiyat makes improvements or not. But it is of the first importance that we should encourage and strengthen the desire to make improvements. We are often told that raiyats do not make improvements; but in my experience I have found that when improvements are made, they are, especially in the case of wells, made by the raiyats; only where the *bhaoli* system prevails it is done under the direction of the landlord. The theory which underlies the whole arrangement is that the landlord has the right to receive the rents; the raiyat has the right to use the land; it is more to his interest that the land should be improved, and therefore he should have the prior right to make improvements. I hope the Council will not accept the amendment."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in section 85, sub-section (*1*). the words "otherwise than by a registered instrument" be omitted.

The Hon'ble SIR STEUART BAYLEY said:—"As this amendment has not received any support, I see no need to say anything."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that in section 85, for sub-section (*2*) the following be substituted:—

"No sub-lease shall be valid for more than nine years."

The Hon'ble SIR STEUART BAYLEY said:—"In consequence of the last amendment this section is not required."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in sub-sections (*2*) and (*3*) of section 85, for the word "nine" the word "five" be substituted. He said:—"We are all alive to the evils of sub-letting. Both the Government of India and the Secretary of State have strongly condemned the institution and urged the necessity of discouraging it. Mons. Laveley has told us that it was to his Lordship the President of this Council more than to any other statesman that the exposure of the evils of the institution as it obtains in Ireland is due. Its effect on the condition of the tenants has been the same here as in Ireland. A Flemish peasant is regarded by statesmen and legislators as a model peasant, but before we can hope to see a peasant like him in this country, it is necessary to educate the Bengal raiyat to regard with horror the idea of allowing a stranger to settle on his land and farming a portion of it. The Flemish peasant would regard it as altogether monstrous. It is with a view to minimise the evil in this country that I move that the maximum period for which a sub-lease shall hold good should not exceed five years. The Bill makes it nine years, and in so far therefore gives a sub-lessee larger rights than what a non-occupancy-raiyat would get under his judicial lease."

The Hon'ble MR. REYNOLDS said:—"I regret I cannot see my way to support this amendment, because, while I sympathise with the hon'ble member in the desirablity of discouraging sub-letting, I am not satisfied that we should effect this object by shortening the term of the engagement. But I hope the improved position of a sub-lessee under the Bill will tend to discourage sub-letting. I may say that this particular term of nine years is the result of a compromise which was the outcome of a long discussion. I therefore think it will be better that the Council should not disturb the agreement to which the Committee came in fixing the term at nine years."

The Hon'ble MR. GIBBON said:—"I would oppose the amendment. If it is carried it will do much not to restrict sub-letting but to encourage it. I quite agree that the more you wish to restrict sub-letting the stronger you must make the position of the sub-lessee. The sub-lessee has no status under the present law; the occupancy-raiyat who now sub-lets has it in his power to defraud his sub-tenant at pleasure, and it is mainly owing to the occupancy-tenant having this power that the admitted evils of the present *partaoli* system are due. Now that it has been thought necessary to withold the right to transfer from the raiyat, it is only by sub-letting a portion of his holding that the raiyat will be able to raise money for his requirements; and, for this purpose I maintain it is necessary to give him a longer term than nine years, and I would extend it to fifteen years. The more you shorten the period for which sub-letting is to be legalized, the greater the load of debt the raiyat must clear off in a year or the greater the burden of debt will remain on the head of the raiyat at the end of the lease."

The Hon'ble SIR STEUART BAYLEY said:—"It was on consideration for convenience that we came to the particular term of nine years. It was seven years previously in the Bill. An

amendment was proposed to increase it to fifteen years, but after considerable discussion the term of nine years was fixed. If you restrict the period, sub-leases will be given under another name. I do not think a sufficiently strong reason has been shown to disturb the conclusion to which the Select Committee came."

The amendment was put and negatived.

The Hon'ble Mr. Hunter, on behalf of the Hon'ble Mr. Amír Alí, by leave withdrew the amendment that in section 85, sub-section (3), the words "by an instrument registered" be omitted.

The Hon'ble Bábú Peári Mohan Mukerji moved that section 86, sub-section (3), be omitted. He said:—"This sub-section creates for the first time a rule of presumption which, I think, is not altogether warranted. The rule of presumption is this, that if a raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender, or if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate, it shall be presumed, until the contrary is shown, that he has given notice to the landlord for the surrender of his holding. At present the Courts reasonably raise a presumption where it is proved that the land surrendered is let to another raiyat from the beginning of the year; but except that one fact no other fact can raise a presumption like this. It is no ground for a reasonable presumption that a man has taken another holding in the village, because he may wish to have two or three holdings in the same village. That should create no presumption that he has surrendered the previous holding, nor is it a presumption that because he has not resided in the village for three months he has surrendered his holding. Your Lordship will see on turning to section 87 that no presumption of a raiyat having abandoned his holding will be raised until after the expiration of the year in which the raiyat actually abandoned it. But here, when the question is as to whether the raiyat will continue liable for the payment of rent, the Bill contemplates raising the presumption in his favour that he has surrendered simply by the fact of his not living in the village for three months. The two things are incompatible with one another, and the presumption is contrary to actual fact that a man may have several holdings in a village without raising the presumption that he has surrendered any of the holdings he previously held. On these grounds I move that the unnecessary rule of presumption which this section tries to create should be omitted."

The Hon'ble Sir Steuart Bayley said:—"If I understand the hon'ble member correctly, he has entirely misunderstood the meaning of the section. This section has nothing to do with surrender; it does not come into effect until the surrender has taken place. The question is, when the raiyat has surrendered, is he still to be held liable for the payment of the next years' rent? If he has given three months' notice the answer is no, if he has not given it the answer is yes, but we look to the object with which three months' notice is required, and we say if he has left the village, or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender, but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same village. If this was a presumption of surrender, then there would be some force in the remarks of the hon'ble member; but the question of surrender itself has nothing to do with this section. It is merely a question whether proper notice has been given to the landlord."

The amendment was put and negatived.

The Hon'ble Mr. Gibbon moved that section 90, sub-section (2), be omitted. He said:—"This section prohibits the landlord from measuring land more than once in every ten years without the previous consent of the Collector. Where boundary-marks are well defined and the circumstances of the holdings remain fixed from year to year, the landlord will not suffer to any very great extent; a measurement once correctly made will hold good for many years; but in sparsely cultivated districts, such as in North Bihár, where raiyats take possession of land without the previous written consent of the landlords, where custom permits the raiyat to take possession of waste land and cultivate it for himself without acquiring the consent of his landlord, the effect will be disastrous. Fallow lands conterminous with the raiyats' lands are encroached upon without the raiyats obtaining the consent of the landlord. Raiyats who wish to protect their lands with an embankment and ditch will, as a rule, erect both embankment and ditch on lands that do not belong to them, and the only means the landlord has of checking trespass is by measurement. The Bill gives the Collector the power to permit measurement whenever he deems fit, but the only reason the landlord could adduce for wishing to measure would be trespass, and the practical effect of this prohibition will be that every case of real trespass which the landlord brings against his raiyat will be construed into an attempt to evade the prohibition, and every request for permission to measure to test trespass will be refused. If any injury will be done to the raiyat by permitting his landlord to measure his land oftener than once in ten years, the injury will not be done by the act of measurement but by the use he makes of such measurement in the Courts afterwards."

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik supported the amendment.

The Hon'ble Mr. Reynolds said:—"I cannot support the amendment, although there may be cases in which the country is only partially cultivated and thinly populated, and in which this sub-section might in some degree prejudice the interests of the landlord; but I cannot in the least agree that the omission of the sub-section will not do the raiyats any injury. The great object of the sub-section is not so much to prevent the landlord from measuring as to prevent harassment to the tenant by continual threats of measuring the land; because there

is nothing the raiyat objects to so much as having his land measured, and it is one of the most powerful engines of making the raiyat come to terms. It is to take away the landlord's power in this respect that this sub-section was inserted. The abuse of the provision is sufficiently provided for by clauses (*a*) to (*c*) which provide for cases in which the landlord might reasonably be allowed to measure oftener than once in ten years. But as a general rule the period which should be allowed to elapse should be ten years; the omission of the sub-section will put the rights of the raiyats in great danger by the landlord constantly threatening to measure lands."

The Hon'ble MR. GIBBON said:—"If it is from the fear of threats of measurement that the injury to be done to the raiyat is anticipated, then the section should have been confined to measurement through the Court, and not to the voluntary measurement of land."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 38 of Act VIII of 1869 (B. C.) be added as sub-section (*3*) of section 91. He said:—"The Bill maintains the right of landholders to measure the lands comprised in their estates, and this section provides for cases in which tenants refuse to attend the measurement and point out the boundaries of their lands. But there is another class of cases in which landholders, and specially those who have come to the possession of estates by purchase at auction-sales, require the assistance of Courts in a much greater degree than in the other. It is where a landholder is unable to ascertain, by reason of a combination among his raiyats, the names of raiyats who hold particular plots of land in his estate. There is no provision in this section which meets such cases. It is true the landholder may proceed under the Record-of-rights chapter, but the procedure which it involves is dilatory and very expensive, and it would throw the local community into a ferment by requiring the landlord to apply for a record of the rights and status of every raiyat in the estate. If a landlord is unable to ascertain with the assistance of the Court the names of the raiyats on his estate and the areas of the land they hold, the parties will in most cases amicably settle other questions affecting them. Section 38 of the present law gives a simple remedy, and I therefore move that it be added as a sub-section to this section. It runs as follows:—

'If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands; and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands, or any part thereof, then and in any such case such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.'"

The Hon'ble MR. REYNOLDS said:—"I think now we have heard the section read, the Council is in a position to judge how far it answers the description of its being a short and simple procedure. The reasons why the Select Committee have not put into this section any provision corresponding to section 38 were given sufficiently by the hon'ble member in charge of the Bill in his opening speech. When the landlord wishes to measure, he can apply to do so; but where he is in such a position as the hon'ble mover of the amendment has mentioned, when he is a recent auction-purchaser, and does not know who the tenants are, it is intended that he should apply for the preparation of a record-of-rights. The hon'ble member says other questions may arise as to the status of the tenant and his rights in the land, but the landlord will surely wish to know all these particulars, and it is desirable that he should know them."

The Hon'ble MR. GIBBON said:—"I support the amendment, but at the same time I think it will be better effected under section 158. A few words added to that section will effect all my hon'ble friend requires, and I would rather see an alteration made there than have all the elaborate procedure of section 38 added to the Bill."

The Hon'ble SIR STEUART BAYLEY said:—"I have no objection to the amendment of section 158 in the way proposed by Mr. Gibbon, but I am not sure that that will satisfy the hon'ble mover of the amendment now before the Council. But the hon'ble member greatly facilitates my reply when he says that the procedure of section 38 of Act VIII of 1869 is simple in comparison to a record-of-rights, and that it is not essential for the landlord to have all that information. But the hon'ble member has not read section 39 of that Act, which raises precisely the same difficulty as in the other case, namely, the double procedure of the Court and the Collector instead of the Collector only. I think that the provisions of section 158 of the Bill are ample to secure for the landlord all the information which the hon'ble member requires."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The law contained in section 38 of Act VIII of 1869 has been in operation for twenty years; still there has not been a single complaint of its harsh operation. But I shall be perfectly satisfied on behalf of landlords if some modification be made in section 158 which will give the landlord the right of applying

for the purpose of determining who is the tenant of a particular plot of land; as it stands the section does not provide for that, and there is no provision in the Bill which will give the landlord the right to make such an application without subjecting him to all the litigation, expense and trouble of a record-of-rights."

The amendment was put and negatived.

The Hon'ble BÁBU PEÁRI MOHAN MUKERJI moved that sections 93 to 100 be omitted. He said:—"Although a provision for the appointment of managers of joint estates was in the Statute-book up to 1874, it remained a dead-letter, and it was repealed in that year along with other obsolete enactments. No case has been made out for a revival of the provision. The facilities which judge-made law has given for the apportionment of rents payable by raiyats in joint estates at the instance of any co-owner, however small might be his share in the joint estate, render such a provision wholly unnecessary. It is besides, in the interests of the co-owners themselves and of their raiyats that every encouragement should be given to a partition of estates and tenures among the co-parceners, and the tendency of recent legislation has also been in that direction. The provisions contained in these sections would conflict with the wisdom of such a policy, and would therefore be a retrograde move."

The Hon'ble SIR STEUART BAYLEY said:—"I am afraid I cannot quite accept in the name of the Select Committee the particular statement of the law laid down by the hon'ble member, nor his recommendation that these sections be omitted. At the risk of detaining the Council I will read what the Rent Commission reported as to the state of facts necessitating the introduction of these sections, and as to the state of the law at present. The fact of the statement being made on the authority of Mr. Field is, I think, a sufficient proof of the present law. The Commission said:—

'A serious source of difficulty in the relations between landlords and tenants arises out of the system of co-parcenary which is customary amongst Hindus, and is not uncommonly imitated by Muhammadans. When co-parceners or co-sharers, as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karia*) or through a manager appointed by, and acting for, all there is no difficulty, and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect seperately the share to which he conceives himself entitled; and the tenant who would comply with all their demands would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant raiyats, who are thus induced to pay more rent to one co-sharer than he is entitled to receive; or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival amins prepare chittahs, the entries in which are regulated by the gratifications which the raiyats are able or willing to give them. Litigation ensue, and the tenants side with this co-sharer or that; they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The raiyats are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

'The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the revenue-authorities or by any of the individuals holding an interest in such estates for the interposition of the Courts of judicature, it shall be competent to the Zila Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue-authorities, or of any such person as aforesaid, to remove any manager so appointed (*id*, section 27). A subsequent Regulation (V of 1827) enacted that when the Zila Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

'Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor.'

"That is the opinion of the Rent Commission, and it was accepted in the first draft Bill, and with certain slight alterations has been retained in the various subsequent editions of the Bill. In regard to the details no amendment is proposed or objection made, and I must oppose the amendment."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I should have liked the hon'ble the Law Member to have given his opinion on the state of the law at present, but I submit that the repeal of a repealing Act can never revive the Act which had been repealed. I think that is the principle of construction of enactments, and in that view there is no law since 1874 for the appointment of managers of joint estates in this country."

The Hon'ble MR. ILBERT begged to explain that the Hon'ble Peári Mohan Mukerji was under a misapprehension in supposing that section 26 of Regulation V of 1812 had been repealed. That section was printed as existing law in Mr. Whitley Stokes' edition of the Lower Provinces Code, which was published in 1878 (Vol. I, p. 111); and, without going into technical considerations, he would merely say that in his opinion it was rightly so printed. The hon'ble member had probably misconceived the extent of the repeal clause in Part VI of the schedule to Act XVI of 1874.

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sections 101 to 115 be omitted. He said:—"When giving his sanction to the provisions regarding record-of-rights, Her Majesty's Secretary of State expressed his apprehension that the difficulties of carrying out the measure may prove greater than the Government of India anticipated. But the practical difficulties of the measures are not the most prominent among its objectionable features. It would cause irritation among landlords and raiyats, and convulse rural society to an extent of which those who are not thoroughly acquainted with the details of our agrarian economy can have little idea. Landholders and raiyats alike have repeatedly prayed the legislature to expunge these provisions from the Bill, as they would do good to neither. They involve an amount of expense and irritating enquiry which will be far from compensated by the result, and it is on this account that to no part of the Bill have the raiyats from different parts of the country offered more opposition than to this."

The Hon'be MR. EVANS said:—"I do not agree with the hon'ble member. There is no doubt that when a record-of-rights is sought to be made over a particular area there will be a considerable amount of contest at the time. But when it has been made, every landlord and every tenant will really be better off, and these records will give facilities in dealing with cases. If such a thing as a cadastral survey and record-of-rights is carried out over the whole of Bengal, it will remove a large source of litigation and uncertainty. Much must be left to the discretion of the Local Government as regards when and where and to what extent the survey and record is to be made. I stated my opinion on this matter when this Bill was referred to the Select Committee. I quite understand that friction must be produced to obtain it, but the ultimate benefit will be so great as to counterbalance the friction."

The Hon'ble MR. REYNOLDS said:—"I think the hon'ble member has overlooked the fact that this chapter, which he desires to omit, will apply to Government settlements. The settlement procedure law is at present contained in Bengal Act VIII of 1879, which this Bill proposes to repeal, and I do not observe that the hon'ble member has any motion for the omission of that Act from the schedule of Acts to be repealed. The result of this amendment, would, therefore, be to leave the Government no means of conducting a settlement of revenue in Government estates except the old Regulation of 1822. I do not think he contemplated any such result."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. I think the chapter as now drafted in the Bill will be more beneficial to landlords than to tenants. In fact, speaking personally as a landholder, I look forward to the operation of this chapter to undo much of the harm which will be done to the landlord's interests under section 18. When it was first proposed and as it stood in Bill No. II, I objected to this chapter, but the Select Committee has removed every objection I had to it, and I look forward to the beneficial effects of this chapter both in the interest of the landlord as well as in those of the raiyat."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to find from quarters so different a concurrence of opinion in favour of this chapter as one of great importance and necessity. For myself I would sooner omit very many other portions of the Bill than this one. It provides for the first serious attempt to secure that which is absolutely required, by means of a careful record-of-rights, not only for the better administration of the country, but for a better understanding between landlords and tenants of their respective positions. Until such a record has been made, we shall have made no progress in the settlement of disputes arising between landlords and tenants. The difficulties to which the hon'ble member refers are difficulties which I am sure we can get over. For if such difficulties have been overcome in a province like the Panjáb, we need fear no serious difficulty in a province like Bengal. We are not intending to press on this process with anything like undue haste or to force it on with undue precipitation. With the sanction of the Secretary of State and of the Government of India the utmost we should attempt in the first instance would be one single district, and we shall be guided much by the success we meet with in that district before proceeding further. I am sure I speak the conviction of the Hon'ble Rao Saheb Mandlik and of every person who comes from that part of India which he represents when I say that where a record-of-rights prevails it has been found to be good and beneficial for all sections of the landholding community."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK reserved his observations until the subsequent amendment in his name came on.

The Hon'ble SIR STEUART BAYLEY said:—"I can hardly be expected to accept a proposal for the omission of this chapter, in the settlement of which the Select Committee has taken an immense deal of pains, and which I think has been reduced to a shape in which it may be worked beneficially and without serious risk of danger to any one. The chapter covers very large ground and can be applied to various cases, individual and general; it may be applied to a tenure or part of a tenure or to a whole district. But I think there has been some misapprehension in the mind of the hon'ble mover of the amendment as to the Secretary of State's opinion, and I may be allowed to quote his words. He says:—.

'While fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Province of Bihár, where the need for it is, you think, most pressing, and the conditions least unfavourable; and to this I will make no objection.'

"You have heard just now from His Honour the Lieutenant-Governor that this order of the Secretary of State is still in full force, and that at present he has no intention of going beyond it. Certain provisions of this chapter are of course applicable everywhere. A landlord in Bengal proper may apply to have these settlement-operations brought into effect in regard to his estate or a portion of his estate; or on a riot taking place in any single landlord's estate, the Local Government may apply to the Government of India for permission to put it in force in that estate. But with regard to a general record-of-rights, not only is it distinctly understood that the Lieutenant-Governor will apply it only in some one selected district in Bihár and abide by the results of that experiment, but it is also certain that, as the Secretary of State has not sanctioned anything beyond that, nothing beyond it will be carried out until the Secretary of State does sanction it. The result I am unwilling to prophesy, but I do say that, as in the neighbouring district of Benares, the operation has been most successfully carried out without much friction and has been the salvation of the tenant, a similar operation may be conducted in the province of Bihár, which is in almost all respects similar to the districts bordering it in the North-Western Provinces. I do not see why what has been worked so successfully in the North-Western Provinces should be inapplicable to Bihár. There is one portion of the chapter to which further allusion will be made when the Hon'ble Rao Saheb Mandlik makes his proposal. I will only say that we look on the provision to which the hon'ble member's amendment refers (section 112) as particularly necessary to be kept in the Bill, but we hope sincerely never to have occasion to use it. It is a very strong power kept in the background to be used when the operation of the ordinary law is not found sufficient. With these remarks I oppose the motion."

His Excellency THE PRESIDENT observed that he had been very much struck by the almost complete unanimity of opinion which prevailed in the Council as to the utility of this chapter. At the same time he was perfectly able to comprehend the natural anxiety which its unreserved application over very extensive areas would occasion both to the raiyats and the zamíndárs. Regarding the question in the abstract, it was perfectly obvious that one of the first steps towards the cessation of litigation and ill-feeling between two antagonistic interests, was that they should each know exactly what belonged to them; therefore no one, HIS EXCELLENCY imagined, not even the hon'ble member himself, could in theory be opposed to the introduction of this chapter. At the same time HIS EXCELLENCY could assure the hon'ble member that not only in deference to the suggestions made to them by the Secretary of State, but also from their own appreciation of the exigencies of the case, the Government of India would be indisposed to consent to the application of the sections referred to otherwise than in the sense and spirit recommended by Lord Kimberley. By applying the machinery of the chapter to a special and limited area in a tentative method they would be able to observe how the clauses were likely to work, and there was every hope that by that cautious method of procedure they would be able to obviate those objections to which the hon'ble member had referred.

The amendment was put and negatived.

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK moved that to section 112 the following be added:—

"Where the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council."

He said:—"This chapter has been admitted by the hon'ble member in charge of the Bill to be exceptional, and I do hope with him that the occasions on which it will be necessary to invoke its aid may not be so frequent as His Honour the Lieutenant-Governor thinks they might be. No doubt cases will arise in which it will be necessary to impose the strong arm of the executive power to bring contending parties to submit to rents by settlement. And, therefore, as in some portions of this chapter, leave is given to settle rents and to reduce rents and to do what in the opinion of the Revenue-officers entrusted with carrying out the operations of this chapter (the effect of which will be to suspend at least for the time the operation of the general law) may be necessary to be done with regard to private property. I think, however, that it is so necessary for the satisfaction of both landlords and tenants that an opportunity should be given for appealing to the Government of India before the record becomes final, that I feel it essential in the interests of the public that a proviso, such as that which I now propose, should be enacted. I distrust nobody, and no doubt Your Lordship is impressed by the fact that these sections of the Bill are necessary to good government; but to me they throw a new light on the state of affairs in this province, and it is only as such that I can view them. But I think it is essential when the ordinary law is suspended that the Government of India should be a referee in the last resort for the purpose of confirming that record when it has been prepared. I move this amendment in the interests of the public, and it will in my view give more assurance to all parties concerned. A reference has been made to me with reference to the Bombay Presidency, and I can say at once that there is no such record-of-rights there. I do not wish to go into the general question, which is a very large one, and under the circumstances disclosed in paragraph 42 of the Select Committee's Report, I do not wish to raise any question about it. I think that when the Government of India determines that sufficient reasons exist to introduce this chapter, they should be entrusted with the duty of seeing that the record should be so prepared that it may be adopted as the future record-of-rights."

The Hon'ble MR. REYNOLDS said:—"I cannot agree with the hon'ble member that the procedure under section 112 will really be a procedure of the executive authorities, though it will be initiated by the Executive Government. I think the hon'ble member has overlooked

the fact that proceedings under this section will be conducted under the usual procedure laid down in this chapter; consequently the decisions of the Revenue-officers will be appealable to the Judge and to the High Court. I confess it appears to me somewhat unnecessary, when such proceedings have received the sanction of what is practically the highest judicial authority, to say that they shall not take effect until finally approved by the Government of India. I presume the hon'ble member thinks that they ought to have the confirmation of the highest executive authority. But it seems to me that, as the procedure will not be of an executive but of a judicial character, there is no necessity for the confirmation of the Governor General in Council to give validity to it."

His Honour THE LIEUTENANT-GOVERNOR said :—"As the section to which the amendment refers is a special procedure to be resorted to in special cases, I should not have thought there was any necessity for a reference to the Governor General in Council before the Lieutenant-Governor can bring it into operation. I believe a great deal of the procedure contained in this section is derived from the Agrarian Disturbances Act, and it is with the view of suppressing threatened disturbances rather than actual disturbances at great emergencies between landlords and tenants that summary provisions like these have been proposed with a view to give the Local Government power to prevent those disturbances. As the Bill stands, the sanction of the Government of India is required before the Lieutenant-Governor can take any steps in the matter. If that precaution is not sufficient, but it is considered advisable that the final record should not become valid before it receives the sanction of the Governor General in Council, I shall not oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said :—"I look upon this subject from the same point of view as His Honour the Lieutenant-Governor. I think this is a special procedure, only to be used under exceptional circumstances, although the rights which will thereby be settled will be settled judicially by the Settlement-officers, who work under the safeguard of an appeal first to the Special Judge, and afterwards to the High Court. Still as the power of reducing rents is given by this section, and not elsewhere, I quite agree that it might be considered an additional safeguard if the settlement requires the confirmation of the Governor General in Council. In that view I accept the amendment."

The amendment was put and agreed to.

The Hon'ble MR. GIBBON moved that in section 120, sub-section (*1*), clause (*a*), after the word "before" the words "or after" be inserted. He said :—"I believe I am right in saying that this is the only attempt ever made under any law to define what are proprietors' private lands. The present law on the subject is contained in section 6 of Act VIII of 1869 (B.C.), which simply says that occupancy-rights shall not be acquired by raiyats holding lands held by landlords as zirát. No attempt has ever hitherto been made to define what zirát lands are. The intention is to continue those lands as zirát which are actually existing as such, and the object is to enable the landlord to avoid the accrual of occupancy-rights in them. Although it may be easy for a landlord now to prove that he has held lands as zirát for 12 years, this Bill is not likely to be amended for some time to come, and some years hence it will be impossible for a landlord to prove what lands he held as zirát 12 years before the introduction of this Act and what he acquired afterwards. We allow a settled raiyat to sub-let for one year land occupied by him, but a sub-lessee does not acquire any rights in lands so leased to him. If a landlord has held zirát land for 12 years, we should assume that he wishes to cultivate it himself. At the same time he may wish to sub-let it for some reason or other for a year or two, but under this Bill if he does so his right to recover possession will be forfeited. I think that it will be very hard on the landlord. I think that 12 years' continuous cultivation should give the landlord a right to protect his interest when he sub-lets the land for a temporary purpose only, and I think we should under this Bill provide the means to enable him to do so, and for this purpose I would move that the words 'or after' be inserted."

The Hon'ble MR. EVANS said :—"I agree with the hon'ble member. I think the desire of landlords to cultivate by their own servants or by hired labour should not be discouraged. There are only a few classes of landlords who cultivate their own lands, and it is very natural and proper that they should have the power to do so considering the valuable crops which are so cultivated. Unless, therefore, there is some policy underlying this section adverse to the holding of lands for the cultivation of valuable crops, such as tea, indigo and opium, in case the opium monopoly is given up, there appears to me to be no reason why it should not be considered that, when a landholder cultivates lands for 12 years, he intends to hold those lands in his own cultivation, nor is there any reason why he should not be allowed to let it for a year or two for purposes of the rotation of crops and the like."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"I shall vote for the amendment. I have gone through the whole chapter relating to waste lands, and there appears to me to be no reason for prohibiting a man who is a large proprietor of waste lands from reserving to himself certain lands for his home farm. But by this section, directly he lets in a cultivator, he loses the land. The certain effect of this provision, I think, will be that he will let in no cultivator, and unless an increase of hired labourers is in view, the object of the Act will be defeated by these very restrictions."

The Hon'ble MR. REYNOLDS said :—"The amendment would have the effect of defeating the object which the Government of Bengal has in view. There are now, and always have been, two great classes of lands—raiyati lands in which the right of occupancy accrues, and khámár lands in which such rights cannot accrue; and it is the object of this section, and has always been the object of the Government of Bengal, that the stock of khámár lands should not be increased to the diminution of the area of raiyati lands. There is undoubtedly evi-

dence before the Government of Bengal and in the papers before the Council to show that there has been great misappropriation of lands as khámár lands on the part of landlords in Bíhár, and especially on the part of planters. The hon'ble member urged that it would be impossible for landlords to show that they had cultivated particular lands for 12 years. If a landlord is put into difficulty in that respect, he can proceed under section 118. He is at liberty to apply to have his khámár lands demarcated and recorded, and if he does so there cannot be any chance of his being deprived of those lands afterwards; but it is certainly the intention that khámár lands should not be added to in future. There is a system in Bíhár under which landlords record as khámár lands which are taken in exchange from raiyats, and the lands received in return by raiyats are also placed under the same heading; so that the result has been to turn raiyati lands into khámár lands. I do not say more than what I see has been said in Mr. Edgar's note on rent questions in Bíhár. The result of saying 'before or after' will be to allow landlords at any time to take up lands, to cultivate them for 12 years, and thus to prevent occupancy-rights from accruing. It is certainly not the intention of the present law that landlords should have this power. The proprietor has the power to keep newly-cultivated lands to himself if he pleases, but I am not aware of any rule to prevent the accrual of occupancy-rights if he lets those lands. If a proprietor takes waste under cultivation after the record contemplated in this chapter has been made, he will have power to keep it under his own cultivation. This question will shortly be raised on the motion of my hon'ble friend Mr. Hunter, and I think that amendment will *bonâ fide* raise the question of waste lands. The effect will not be permanently to bar the acquisition of occupancy-rights, but it will be sufficient to enable the landlord to cover any expenditure incurred by him. But the effect of the present amendment will be to prevent the acquisition of occupancy-rights for ever in lands which come into the temporary possession of the zamíndár. The section as it stands will give the landlord probably more than he is entitled to have: if he has cultivated for 12 years, the Revenue-officer will not look further; he will have to record the lands as private lands. In the same way he will be bound to record all cultivated land which is recognized as khámár. Under these rules I cannot think that the section is in any way unfair to the landlord, and I think any extension of them which would allow him, by taking possession and holding lands after the passing of the Act, to increase the stock of khámár lands, will not be in accordance with what is intended by this chapter, and it will not provide a remedy for an acknowledged evil in Bíhár."

The Hon'ble Mr. Hunter said:—"I support this amendment. The hon'ble the Law Member told the Council in eloquent words the other day that the man who cultivates for a profit is now coming face to face with the man who cultivates for a subsistence. The Bill makes many and valuable provisions for the man who cultivates for a subsistence, and I think the hon'ble gentleman who brought forward this motion might fairly ask the Council to accept his amendment in favour of the man who cultivates for a profit. The last speaker has dwelt on the dangers of the landholders encroaching upon large areas as private lands. I admit that such dangers existed in times past, but I think they are sufficiently provided for by the khámár and contract clauses in the Bill. I therefore think it would be sound policy to accept the amendment proposed by my hon'ble friend."

His Honour the Lieutenant-Governor said:—"I have only a few words to say in addition to what has fallen from my hon'ble friend Mr. Reynolds. When the Bill was originally drawn it contained a provision which required the Local Government to order a measurement and separation of private lands of proprietors in each village from raiyati lands in the possession of cultivators. That was modified as the discussions went on by making that provision permissive instead of imperative, and it did not include the words 'or after' which the hon'ble member very ingeniously wishes to introduce now. The object of not inserting those words was to give protection to raiyati lands against any future encroachment on the part of the zamíndár. Lands which for twelve years before the passing of this Act are shown as domain land will be protected. But if you give power at any time after the passing of the Act to carry on that process to any extent to which the landlord may be willing, lands which are now raiyati may be converted into domain or private lands. That was thought undesirable. The zamíndár will at all times have the right to cultivate as much land as may be surrendered to him by hired labour, the only condition being that, if he lets it out to tenants, they will have the chance of growing up into raiyats with rights of occupancy. I think on the whole the advantage is on the side of retaining the section as it stands."

The Hon'ble Sir Steuart Bayley said:—"This section is one which has troubled my mind a good deal. I am very anxious to meet the wishes of my hon'ble friend, but, as it stands, I see great objection to accepting this amendment. As I said before, it is necessary that we should understand that the sole distinction between khámár lands and raiyati lands is that if raiyati land is let to occupiers they acquire occupancy-rights, and that if khámár lands are let occupancy-rights will not accrue. The landlord is at liberty whenever he gets possession of land to cultivate it with hired labour. As has been said by my hon'ble friend Mr. Reynolds, there is ample evidence before the Government to show that a very large proportion of what are or ought to be raiyati lands in Bíhár has been shown or recorded as zirát or domain lands. If land was surrendered or abandoned it became zirát, and I have known cases of lands exchanged for indigo-cultivation, in which not only does the old land now made over to the raiyat for indigo appear as zirát, but the land which he gives up in exchange is also added to the stock of zirát lands. That has been carried to an extent which presses very severely on the extremely large population of Bihár, which has an agrarian population of 800 to the square mile; and it was to put a stop to this state of things that this section was first

introduced. So far as the subsequent sections are concerned, there is no objection. The object of the hon'ble mover of the amendment is this. You provide that land which has been cultivated by a zamíndár for 12 years before the passing of the Act should be recorded as zirát land. But suppose no Settlement-officer should come on the ground for 20 years; if you put off your enquiries for 15 or 20 years, it is difficult for the landlord to prove that he cultivated particular lands for 12 years before the passing of the Act. That is certainly fair argument. But section 118 has been introduced to meet this difficulty. It allows a landlord to go before a Revenue-officer to-morrow and ask him to record the land which he holds as private lands now, and he saves himself from any difficulty about enquiry on a future date as to facts belonging to the past. The Select Committee on the whole thought that section 118 was sufficient to meet that difficulty. Then there is the danger, which my hon'ble friend Mr. Reynolds has pointed out, that if you put in the words 'or after,' and if the same system of retaining surrendered lands goes on as hitherto, suppose the landlord cultivates that land, it will become zirát land in time. On the other hand, if the Revenue-officer comes immediately after the passing of the Act, and the 12 years' cultivation accrue afterwards, then the amendment will fail to meet the object with which it is introduced. Then, as regards lands which are at present actually waste, I mean jungle land, my hon'ble friend Mr. Hunter has an amendment dealing with that particular case. I am prepared to consider that amendment, and although I do not see my way to go quite so far as the Hon'ble Mr. Gibbon desires, I am quite prepared to take a different view with regard to waste lands, and to secure such land under certain restrictions to the landlord who breaks it up."

The Hon'ble Mr. Gibbon said :—" I would like to clear up some extraordinary misapprehension influencing the minds of some hon'ble members with regard to this matter. The hon'ble member opposite spoke of landlords' zirát This section refers only to proprietary lands, not to the class of lands to which the hon'ble member referred. The hon'ble member spoke of the encroachments of planters on the raiyats' cultivation of the country and their misappropriation of lands, and in order to check planters misappropriating land, wished to see these restrictions placed on the acquisition of zirát lands by proprietors; but planters are not proprietors; they are thíkadár landlords, and this section will not affect them. If the object of this section is to prevent landlords in general acquiring lands for their own purposes, then that object is not effected; if such landlords are affected at all, they will be affected under the merger clause. When a proprietor has cultivated particular lands as private lands for 12 consecutive years and thereby acquired private rights in that land, I submit that he should be permitted to acquire such rights by 12 years' cultivation whether the land was cultivated for 12 years before or after the passing of the Act."

The amendment being put, the Council divided :—

| *Ayes.* | *Noes.* |
|---|---|
| The Hon'ble G. H. P. Evans. | The Hon'ble J. W. Quinton. |
| The Hon'ble H. St. A. Goodrich. | The Hon'ble H. J. Reynolds. |
| The Hon'ble Peári Mohan Mukerji. | The Hon'ble T. C. Hope. |
| The Hon'ble Rao Saheb Vishvanath Narayan Mandlik. | The Hon'ble Sir S. C. Bayley. |
| The Hon'ble W. W. Hunter. | The Hon'ble C. P. Ilbert. |
| The Hon'ble T. M. Gibbon. | Lieutenant-General the Hon'ble T. F. Wilson. |
| | The Hon'ble J. Gibbs. |
| | His Excellency the Commander-in-Chief. |
| | His Honour the Lieutenant-Governor of Bengal. |

So the amendment was negatived.

The Hon'ble Bábú Peári Mohan Mukerji moved that for sections 121 to 142, sections 68 to 101 of Act VIII of 1869 (B.C.) be substituted. He said :—" The provisions of the Bill amount virtually to an abolition of the institution of distraint. They give the landholder nothing beyond what every plaintiff may have under the Code of Civil Procedure. They amount virtually to provisions for attachment before judgment, and in so far they are miscalled provisions for distraint They might well have been omitted altogether. And yet the Government of India in their despatch to the Secretary of State stated in one of their proposals that they would give the landholders a modified form of distraint which would enable them to collect their rents with greater ease than at present, and thus led them to expect that larger powers would be given them in this direction. The provisions in question go quite the contrary way. I know of no complaint of the powers of distraint having been abused, at least in Bengal. The provisions of the present law are such that no abuse of the powers of distraint can be made with impunity. They give, moreover, few opportunities to the landholder or his agent for the abuse of power. They simply allow him to attach the crops by word of mouth, but he cannot interfere with the crops or with the tenant's right to do with them as he likes unless with the help of the Court. It is the fear of the consequences to the raiyat if he removes the distrained crop that constitutes the soul of the institution. If the raiyats had been a substantial class of men, possessing means and resources which the landholders could fall back upon for the recovery of their rents, the institution of distraint would have been comparatively unimportant. But, knowing, as we do, that the crops constitute in most cases the landlord's security for his rent, specially in the case of non-resident-raiyats, the abolition of the institution or a modification of it in the way contemplated by the Bill would throw the greatest

obstacle in the way of recovery of rent. Besides, the expensive procedure which the Bill gives the landholders would ultimately add to the burden on the raiyat and injure him perhaps more than his landlord. In cases, again, where the raiyat will remove his crop while the landlord is engaged in getting out an attachment from Court, the latter would not only lose his rent but also his expenses. I may mention that the Presidency Conference, the Patna Conference, the Burdwan Conference, the Rajshahye Conference, the Orissa Conference, and a number of high officers of State recommend that the provisions of the present law should be maintained."

The Hon'ble MR. EVANS said:—"It is certain there is abuse of distraint in certain parts of the country which needs remedy. The doubt is whether the remedy will not prove more grievous than the disease, unless the legal processes of distraint are made cheaper. Hoping that steps will be taken to reduce the process-fees, I shall oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I was sorry to hear the hon'ble mover of the amendment say that in writing to the Secretary of State we had given the zamíndárs the promise of a simplified form of distraint and that we had not carried out that promise. The hon'ble member referred to the summary of our recommendations, which runs as follows:—

'To provide for the more speedy realization of arrears of rent when the rates are undisputed by a modified method of distraint, and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.'

"Unfortunately, however, the hon'ble member must have omitted to refer to the body of the despatch which explains the scheme. Had he turned to paragraph 98 of the despatch he would have seen that the Government of India wrote as follows:—

'As already mentioned, the Rent Law Commissioners recommended the abolition of distraint, but the reports of the district and divisional officers, and the urgent representations of the zamíndárs, led to a general concurrence of authoritative opinion that distraint must, in some shape, and at least for the present, be maintained. We accept the principle of Chapter XIV of the Bill that distraint shall be permitted on application to a Civil Court and through the agency of an officer thereby deputed.'

"Now this is the identical scheme of the Bill which has been maintained throughout and has only been modified by the provision enabling the Courts to issue *interim* injunctions and by that which enables the Lieutenant-Governor to apply the old procedure in certain special cases. We have therefore strictly carried out what we declared to the Secretary of State was our intention, and the honble member's charge against us is quite baseless.

"Then he says there is no complaint or evidence of the law having been abused in Bengal. Mr. Dutt, the Collector of Backergunge, says:—

'I am very strongly of opinion that "if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zamíndárs' servants." Private distraint is so constantly and almost invariably abused, and in this district has so frequently been the occasion of breach of the peace, that it cannot be allowed to continue in the Statute book. When the right is exercised, the chances are nine to one, that it is exercised not with the legitimate object of realizing rent, but with the object of harassing the raiyat to compel him to comply with some other demand with which he is not bound legally to comply.

'I am not singular in my opinion in this respect. Bábú Dina Bandhu Sen, who as pleader has acted oftener for zamíndárs than for raiyats, and who has gained a thorough and practical experience of the working of the law from many years' observation, states:—"In nearly all the cases of distraint which have come to my notice as a pleader in this district, I have observed that the law has been abused." This is the opinion of most persons that I have consulted, but Mr. Reily is of a different opinion, and maintains that the right of private distraint helps zamindars in getting their rents expeditiously, and should be retained.

'Private distraint should, in my opinion, be abolished altogether. The remarks made above apply with only somewhat less force to distraints under order of Courts. Distraints are not applied for to realize rents, but to harass raiyats, and make them comply with other demands with which the raiyat is not bound to comply. This was the opinion of most of the gentlemen who attended a meeting which I convened in Burrisal to discuss the Rent Bill; and all the gentlemen, except a few zamíndárs, agreed that there should be a special provision in the law that an application for distraint should not be complied with by Courts unless satisfied *primâ facie* that there is no other means of realizing rent. My opinion is the same. Private distraint should be abolished altogether; and if the remedy of distraint under orders of the Court be retained, there should be a special proviso that no order to distrain shall be passed unless the Court is satisfied *primâ facie* that there is no other measure for realizing rent.'

'I have received abundant and almost unanimous testimony on this point. The First Munsif of Burrisal says that 95 per cent. of the applications for distraint made to him within the last 11 years of his service were made solely to compel raiyats to submit to unreasonable demands. He says, "two of the biggest zamíndárs in the district, Bábú Kali Kissen Tagore and Rajá Satyananda Ghosal, who are known to be very good landlords, have scarcely any occasion to avail themselves of the law of distrain." It is the oppressive zamíndárs only who avail themselves of the law to harass raiyats. The Munsif, therefore, recommends the entire abolition of the law of distraint, which, he says, will not create any real difficulty in the realization of rent. He believes that in Bengal much greater oppression is committed by distraint through Court than by private distraint, because landlords, when bent on oppression, try to give their proceedings a semblance of legality.

'It was resolved at the Divisional Conference at Dacca to let the provisions of the present Bill stand as they are.'

"Then the Subordinate Judge of Burdwan says:—

'The chapter on distraint is an improvement on the present law. I am not for abolishing distraint altogether. The supervision of the Court would be a perfect safeguard against the abuse of the power, and if timely application be made there would be no fear of the process being deprived of its practical utility.'

"The Subordinate Judge of Backergunge also says:—

'In my humble opinion the power of distraint should be at once taken away from the landlords, for, as far as my experience goes, I have never seen any case of distraint in which the power was not abused by the landlord. The good landlords never distrain the crops of their tenants in any district. Only oppressive landlords distrain crops of such of their tenants who do not come to terms with them regarding the rate of rent. In these cases the distrained crop is partly spoilt and is partly stolen by the servants of the landlords, and in this way the raiyat suffers great damages. Under these circumstances, I beg most humbly to propose that it would be better for the good of the community to take away the power of distraint from the landlords. For the purpose of realizing safely the rents due from the raiyats, provisions may be made for attaching the standing crop before judgment, after instituting a suit, if the landlord can satisfy the Court that if the crop be not so attached it would be difficult for him to realize the rent due from the raiyat.'

"I could quote also equally strong evidence given by the Munsifs of Burrisal, Bagirhat and Serajgunge, who all agree in saying that the process is resorted to very rarely with the object of realizing legitimate arrears, but very generally for the purpose of crushing refractory raiyats. It can scarcely be said therefore that oppression has not been proved when we have such strong evidence from a number of judicial officers who have had cases of distraint brought before them. It is on such testimony as this that it was determined that the old law of distraint should not be maintained. The Bíhár Committee proposed in 1878 to abolish it; the Rent Law Commission was also in favour of its abolition. This was not agreed to, but it was proposed to keep it in a modified form. We have given a special power to the Local Government in certain parts of the country where the want of this process presses heavily on landholders to relax the law and allow the continuance of the old process, subject in every case to notice being given to the Court. Although I cannot gainsay what the Hon'ble Mr. Evans has said as to the terrible expense of the process to the raiyat, I can scarcely imagine that it will be a greater danger to the raiyat or worse than that from which he now suffers."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The Hon'ble member in charge of the Bill referred to the opinions of the District Officer of Backergunge and the Subordinate Judge of Burdwan in respect of the abuse of the law, but they don't speak from their own experience; they considered the question theoretically and thought that the law was liable to abuse. It is only the Subordinate Judge of Backergunge who spoke of his experience; and what weight should be attached to this opinion I leave the Council to determine, knowing, as we do, that in no district have the raiyats got more power in their hands than in Backergunge; and in no place therefore are abuses less likely to occur.'"

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clause (*b*) of section 153 be omitted. He said:—"This clause gives a final jurisdiction in the trial of suits the value of which does not exceed Rs. 50 to special officers appointed by the Local Government. This, I submit, is a retrograde move. It takes away the constitutional right of appeal, and gives in its place a provision the proper working of which will depend upon the care with which the Local Government will select the officers. It is another instance of the power which the Bill gives to the executive authorities to interfere with the judicial administration of the country. The value of a suit might not exceed Rs. 50, but that is no index of its importance to the parties concerned. It might be a typical case, the result of which would influence the settlement of a dispute between the whole body of the raiyats of a village with their landlord. It might be a case the decision in which regarding the question of instalments by which rents are payable would settle a long-standing dispute with the raiyats of a village. In all such cases the result of the suit is very important both to the landholder and to the raiyat. I should be sorry to see a constitutional right taken away and a provision given in its place the efficacy of which will depend upon a proper exercise of the powers of the executive authorities."

The Hon'ble MR. EVANS said:—I object to the amendment. No doubt an appeal is taken away in certain cases, where the suit does not exceed Rs. 50, but this is not so in suits in which a question of title to land or of right to enhance or vary the rent of a tenant or of the amount of rent annually payable by a tenant is in dispute. The net result is that an appeal is only taken away in that class of cases where the question really is merely, taking it that the rent is known, whether the rent has been paid or not. Not only do I object to the amendment, but I am surprised to find it come from that quarter. I should have thought zamíndárs would not wish to be harassed by delays in the execution of decrees arising from vexatious appeals."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"It is not merely the fact of payment or non-payment which is involved in such cases. Besides the cases mentioned in the proviso, there may be other cases of importance to the zamíndár; for instance, cases which may influence the decision of many other suits involving questions of instalment of rent or questions of custom."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 156 be omitted. He said:—The provisions contained in this section are opposed to the judge-made law on the subject. It has been held by the Hon'ble Judges of the High Court that when a tenant is ejected by order of Court the crops on the land go with the land to the landholder. But this section provides elaborate rules for the purpose of giving the raiyat a right to enter upon the land and to rear and reap the crops after he has been ejected. When a decree for ejectment severs all connection between the raiyat and his landlord, I do not see what considerations can justify such a provision. The Bill shows no consideration for the crops of occupancy-raiyats which would go to the purchaser by sale of their holdings. Why should non-occupancy-raiyats be deemed entitled to greater consideration in this respect, specially when they may protect themselves from ejectment by payment of the amount due by them?"

The Hon'ble SIR STEUART BAYLEY said:—"I would point out that the obvious difference between sale and ejectment is this; when a raiyat is sold up he gets the money which includes the value of the crop on the ground. Why when he is ejected should he lose it? In regard to this point the Rent Commission said:—

'There are in the existing law no provisions as to the *away-going crop*; and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a raiyat is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such raiyat would have been

entitled to reap or gather, such raiyat shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering and removing the same; and in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.'

"The principle seems a very sound one that the landlord should not by choosing his time for ejectment not only ruin his raiyat but should himself benefit by the crop in the ground which the raiyat has sown and which he is entitled to reap."

The amendment was put and negatived.

The Hon'ble Mr. Hunter moved, on behalf of the Hon'ble Mr. Amír Alí, that section 156, clause (*c*), be omitted. He said :—"The question has been fully discussed by the Select Committee."

The amendment was put and negatived.

The Hon'ble Bábú Peári Mohan Mukerji moved that clauses (*c*), (*e*) and (*f*) of section 100 be omitted. He said :—"These clauses introduce material changes in the present law as to what should be deemed protected interests when a tenure is sold for its own arrears. Clause (*c*) gives protection not to leases given for building or manufacturing purposes at a fair rate of rent, but to all leases of land on which buildings, &c., have been erected, perhaps without the consent of the landlord, and reserving, it may be, only nominal rents; clause (*e*) extends the protection to judicial leases granted to non-occupancy-raiyats; and clause (*f*) gives protection to all leases granted by the outgoing tenant if the rents reserved on them were fair and equitable at the time the leases were granted. The result of these provisions would be to give a tenure-holder the power of creating leases in favour of his relatives and dependents which would absorb the whole profits of the tenure, and then to put the tenure up to sale for the purpose of entrapping unwary purchasers. These clauses would encourage fraud and collusion and give rise to much litigation."

The Hon'ble Sir Steuart Bayley said :—"I wish to meet the hon'ble member on one point on which he spoke, but I would first point out that the protection to subordinate interests against which the hon'ble member protests is precisely the protection given in case of sales for arrears of Government revenue. I admit, however, that in regard to clause (*c*), though the danger of injury is such as may safely be overlooked in regard to its bearing on Government revenue, yet the danger of seriously lessening the rent of the superior holder by protecting absolutely all interests created under clause (*c*) is not imaginary, and we ought if possible to safeguard the landlord against it. It can be met by an adaptation of section 13 of Bengal Act VII of 1868, and I propose therefore to insert a clause to that effect. It will be precisely the same as the section of the Bengal Act in a modified form so as to make it run with this chapter. It will come in after section 167 of the Bill. To this extent I am prepared to meet the hon'ble member's objection, but no further."

The Hon'ble Bábú Peári Mohan Mukerji expressed his willingness to accept the proposed section as far as it went, and this was then agreed to.

The Hon'ble Bábú Peári Mohan Mukerji's amendment was put and negatived.

The Council adjourned to Wednesday, the 11th March, 1885.

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*Extract from the Proceedings of the Council of the Governor General of India, dated 11th March, 1885.*

## BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble Bábú Peári Mohan Mukerji moved that clause (*a*) of sub-section (*2*) of section 163 be omitted. He said :—"My remarks on this clause will also apply to my motions to omit sections 164 and 168. These sections introduce changes in the present law the necessity of which has never been experienced. They provide for sales of tenures subject to registered incumbrances in the first place, and free of such incumbrances only when the proceeds of first sale prove inadequate to satisfy the decree. The present law is that, whenever a tenure is sold for its own arrears, it is sold with power given to the purchaser to avoid incumbrances created by the outgoing tenant. It is a provision which has a wholesome effect not only in checking the progress of sub-division and sub-infeudation, but also in preserving tenures in their pristine integrity. The result of the contemplated changes will be quite the other way. They will perpetuate sub-divisions and sub-infeudations, and reduce the value of tenures at every successive sale. But in whose interest are these changes advocated? The superior proprietor will be delayed in the recovery of the amount of his decree, and the security for his rent will diminish with every sale of the tenure; the judgment-debtor will be saddled with unnecessary costs, and the sale will fetch a much less price than what it would have otherwise done; while the purchaser will have to give his bid in the dark, not knowing what incumbrances relating to the property have been registered within the last 10 or 15 years, and he will be exceptionally fortunate if he does not find in the end that he has made an extremely bad bargain. When not one of the three interested parties is likely to benefit by the proposed

modifications in the present law, I hope hon'ble members will see fit to maintain the present law in its integrity."

The Hon'ble MR. EVANS said :—"I do not think the judgment-debtor should benefit by the avoidance of his incumbrances. As I understand the matter, that is usual in sales for arrears of the Government revenue only because it is absolutely necessary for the protection of Government revenue and only so far as it is thought necessary, and there is power to Government to cancel the sale in cases of hardship. No man ought to be allowed to say that he incumbered the tenure but now wishes to sell free of incumbrances. The only admissible argument will be the protection of the superior landholder. I do not think there is any great hardship to the superior landholder in protecting as far as we have done *bonâ fide* incumbrances."

The Hon'ble MR. GIBBON said :—"I oppose the amendment. It is only necessary to provide means to the landlord to recover what is due on account of rent. The Bill provides that in every way possible. It provides that the tenure shall only be sold in the first instance subject to incumbrances; but if the amount of the purchase-money does not cover the amount of the decree, the tenure can be sold again free of all incumbrances. It is necessary in all other cases to protect incumbrances. Some tenures under my management consist of hundreds of acres, and the incumbrances are of very large amounts, from Rs. 20,000 to Rs. 40,000; and simply because a comparatively small sum of five or six hundred rupees may be due to the landlord as rents, to allow that the tenure should be sold free of incumbrances in order to recover such a small sum would be very hard to landed capitalists. I think it very necessary to give the protection which the Bill provides."

The Hon'ble SIR STEUART BAYLEY said :—"It seems very obvious that there is real necessity to protect incumbrances on tenures. The tenure-holder has a right to do what he likes with the land as long as he pays the superior landholder the rent secured upon it, and, as the Hon'ble Mr. Gibbon has pointed out, many of these incumbrances are such that in the interests of public policy they should be secured. Is it reasonable that the tenure-holder, having got a large bonus given for permission to build or to dig a tank or to erect a manufactory, should by defaulting allow the tenure to be sold up and leave the interests of these incumbrancers absolutely at the mercy of the purchaser? It is true that the tenure-holder will get a larger sum if the tenure is sold with power to avoid all incumbrances, but what does that mean? It means that having taken a bonus for permission to make the incumbrance, he again gets paid by the purchaser for permission to avoid it. He gets the value twice over by a deliberate swindle of the incumbrancer. If there is really danger to the rent of the superior holder I think it ought to be safeguarded, and with the view of giving the necessary protection I have proposed the section next in the list. But as long as that is safeguarded I cannot see that any injury will befall to any other party, and it is much in the interest of public policy not to allow the tenure-holder deliberately to swindle the incumbrancer."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for the word "thirty" in sub-section (4) of section 163 the word "twenty" be substituted. He said :—"The present law allows a sale to take place after 20 days from the date of the proclamation of sale. The extension of the minimum period to 30 days will simply add to the delay in the recovery of the amount of the decree. No complaint of hardship has been made on the ground of the procedure for the sale of tenures for their own arrears being different from that which obtains with regard to other sales. I therefore fail to understand why this additional source of delay should have been introduced in a Bill which was started with the distinct object of giving landholders facilities in the recovery of rent."

The Hon'ble MR. GIBBON said :—"I think we have gone quite far enough under section 163 to change the law. The present law, as far as my experience goes, allows you first to attach the property and afterwards appoints a day for the proclamation of sale. The proclamation always gives the tenant time to protect his own interest; whereas we propose now that the attachment and proclamation shall be simultaneous, and we only give 30 days. If you reduce that period to 20 days and still maintain the new provision of the law which necessitates attachment and proclamation at the same time, we shall be doing the judgment-debtor very material injury. It is also necessary to make the intended sale as public as possible and to give all persons who may have incumbrances on the holdings, and whose incumbrances would be voided by the sale, time to protect their own interests."

The Hon'ble SIR STEUART BAYLEY said :—"The Hon'ble Mr. Gibbon has stated the reason which induced the Select Committee to make this alteration. I believe I am right in saying that 30 days is the term in the Civil Procedure Code, and 20 days in the present law refers to tenures and not to occupancy-rights, which are sold in 30 days."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"With reference to what the Hon'ble Mr. Gibbon has said I wish to observe that it is not necessary under the present procedure that there should be a process of attachment before proclamation is made for the sale of the tenure. The tenure or holding being hypothecated for its own rent, from the nature of the case, no attachment is necessary, and therefore the additional convenience to which the hon'ble member points, far from being a convenience at all, will be so much more delay to the landlord."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 164 be omitted.

The Hon'ble SIR STEUART BAYLEY moved that to section 167 the following sub section be added :—

"(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160 (e), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

"This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land."

He said :—"This is the sub-section which I propose to insert to meet the wishes of my hon'ble friend Bábú Peári Mohan Mukerji. It is a re-production of section 13 of Act VII of 1868 (B.C.), and its effect is that if the incumbrance is of such a nature as to diminish the value of the security for rent, the purchaser can enhance the rent to a fair standard."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—I think the proposed amendment will supply a defect in section 160, and I therefore support the motion."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 168 be omitted.

The Hon'ble MR. GIBBON moved that section 174 be omitted. He said :—"This, I think I am right in saying, is a perfectly new provision of law, and will have an effect which was not intended. It is intended to give the judgment-debtor 30 days' grace after the property is sold; it will allow him, after the property is sold, to pay the amount of the decree plus 5 per cent. of the purchase-money, and thus recover his holding. The practical effect will be to encourage a tenant whose property is put up for sale to put off the day of payment. It will prevent *bonâ fide* agriculturists and tenants from coming forward to purchase. In the first place, they cannot afford the waste of time; it necessitates his going to the Court to purchase, to go 15 days afterwards to purchase, and again 30 days after to see whether the sale has been confirmed or the money has been paid by the tenant, and again to recover his money from the Court. The very uncertainty will deter people from paying proper value, and it will deter agriculturists from purchasing It will encourage land-jobbing in its worst shape by forcing the purchase of all holdings into the hands of the hangers-on about the Courts—men who will not purchase them with any intention of retaining them, but purchase them because they see them going for little or nothing and may make a profit by their re-sale, or at any rate secure their 5 per cent. on the purchase or on their bid. There is another reason for not allowing this provision to become law. The law allows a judgment-debtor to set aside a sale of his property on account of any irregularity in the sale, and I would ask hon'ble members to try to realise the effect this provision will have on the minds of the Courts when the judgment-debtor goes forward to set aside a sale on the ground of irregularity. The Court would at once refuse his application on the ground that he should have paid up the amount of the decree instead of applying under section 311 of the Civil Procedure Code. It will retard the recovery of rents, injure the landlord, and throw property into the hands of speculators and land-jobbers. It is bad policy."

The Hon'ble MR. EVANS said :—"I am exceedingly sorry to differ from my hon'ble friend in regard to a practical matter of this kind in which no doubt he has had considerable experience, and his judgment is therefore entitled to great weight. But it appears to me that this is a very important provision of the Bill. The tenacity with which proprietors and raiyats in this country cling to their land is remarkable. They are improvident and get into arrear; but when they find they are to be dispossessed, they struggle to protect their interests, and they commit wholesale perjury in order to do so, and they proceed by a regular system of obstructing the execution of the decree. When the sale has once been made, it is a matter of common form for them to lodge a petition under section 311, alleging every conceivable irregularity; they deny receipt of notice of sale, they say the process peons were suborned, and they produce a number of villagers to say that they never saw the peon, and they allege every other possible irregularity. Suppose the debtor succeeds in proving irregularities, he has further to prove that they caused substantial loss. He then goes in with a number of friends and neighbours to exaggerate the value of the holding, and swears that it was sold for less than it ought to have been sold for, and that the decrease in price was due to these irregularities; and if the Judge of the first Court decides against him, he, as a rule, appeals up to the High Court; and the Courts very often, when they can, try to help the man, but very often they are unable to do so. Execution proceedings are among the most tedious and expensive proceedings we have, and all Judges have lamented this particular cause of litigation. For the purpose of stopping this class of litigation, which is of an exceedingly bad character and is more full of false evidence than any other class of litigation, I think this provision is a very good one. It is intended to check these evils and give relief to the people. It will also afford great relief to execution-creditors. When a man finds that his land is lost, he has got the chance of recovering it by paying 5 per cent. in excess of the purchase-money, and if he does so the whole thing is over; the decree-holder has got his money without a long litigation, and the purchaser is not damaged, because he too gets back his money, with 5 per cent. in addition. I have long thought that some measure of this kind introduced into the Civil Procedure Code might have a good effect. This was thought a good opportunity for trying the experiment, and a number of Judges to whom I have spoken think it will be a valuable provision and will work well. The getting rid of the class of cases I have described will be of immense good. The only person in any way prejudicially affected is the purchaser, but we have secured his interest by giving back his money with 5 per cent. by way of interest. The great delay and uncertainty

at present existing in these cases will be greatly diminished. The two other persons mainly concerned are the judgment-creditor and the judgment-debtor, and they will both, I think, be benefited. The intending purchasers will not as a rule be discouraged from bidding, for there will be less chance of long litigation, which at present makes property at execution-sales fetch low prices, and discourages *bonâ fide* investors, and encourages speculators in litigation. I, therefore, strongly object to the amendment, and ask the Council to retain this provision in the Bill as being possibly a solution which, if I am right, will be really useful."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I also oppose the motion. I fail to appreciate the force of the arguments advanced by the hon'ble mover in support of it. A purchaser of a tenure or holding at an auction-sale always makes the purchase subject to the risk of the sale being set aside on the grounds mentioned in section 311 of the Code of Civil Procedure. The section in question will not add to that risk. There is no reason, therefore, why the sale should fetch a less price than it would have otherwise done. The costs incurred in trials regarding the validity of sales are sometimes enormous, and it usually takes years before the question is finally decided. This new provision will remove one of the most fruitful sources of litigation, and, while it will give back his property to the judgment-debtor without putting him to harassment and expense, it will give the purchaser a reasonable profit by the transaction, and save him from the costs and suspense attendant on a protracted litigation. I hope hon'ble members will recognise in this new section a great improvement on the present law on the subject."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK opposed the amendment. He said :—"I think the section will introduce, in addition to other troubles, the speculative element against which all the Civil Courts have been struggling. Although it is in one sense an attempt to relieve tenure-holders and occupancy-raiyats by opening a door to repentance, I think in all these matters the quickest step is the wisest step for all parties concerned. A man who has allowed so many opportunities to escape him is not the man for whom we ought to plead. The purchaser is no doubt sufficiently recouped by getting back his money with interest; but the real difficulty is the opportunity given for speculation, and I think that can do no good."

The Hon'ble MR. AMÍR ALÍ said :—"I also oppose the amendment. The reasons in favour of this provision have been fully given by my hon'ble friend Mr. Evans, and it is unnecessary for me to detain the Council by going over the same ground. Any one who knows the practical difficulties arising under section 311 of the Civil Procedure Code will appreciate the boon of such a provision in this Bill. From my own experience I can say that the majority of purchasers will be glad to recover their money with a substantial interest instead of being engaged in harassing litigation to support the purchase."

The Hon'ble MR. GIBBON said :—"This provision is not a substitute for section 311 of the Civil Procedure Code, but an addition to it. You maintain all the drawbacks of the present law and give the judgment-debtor another excuse for not paying up on the due date. The practice is very different in regard to estates taken under management by Government to save the old proprietors. Estates are not first sold up and taken into management afterwards, but the Collector, acting under authority, realises the difficulty of the debtor and takes charge of the estate beforehand. The Government does not proceed by putting up the estate to sale and inducing persons to buy on speculation. This provision would have the effect of depreciating the value of the property by deterring people who would otherwise be purchasers from spending their time to make purchases which will not be confirmed. The present law declares that a purchaser under a decree should pay the amount within 15 days; he must go one day to make the purchase, he must go 15 days afterwards to pay the purchase-money, and he must go again to see if the sale has been confirmed. Any would-be agricultural purchaser would be deterred from making a purchase under such circumstances."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clause (*d*) of sub-section (*1*), sub-section (*2*), and clauses (*c*), (*e*), (*g*) and (*h*) of sub-section (*3*), of section 178 be omitted. He said :—"In imposing various restrictions on the freedom of contract in transactions between landlord and tenant the legislature has proceeded on the hypothesis that the vast majority of raiyats form a body of men who are incapable of understanding and taking care of their own rights and privileges. Nothing could be more erroneous. It is seen from the preamble of Regulation IV of 1794 that, although the legislature of 1793 enjoined the exchange of written engagements between landlord and tenant, the raiyats deliberately refused to enter into written engagements in view of protecting their own interests. I shall read to the Council what the Rent Commission said on the subject in their report :—

"The legislature of 1793 directed its efforts to the introduction of written engagement between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements; but neither party was in the least persuaded or converted, and finally a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use made of the provisions of the existing law, which enable the raiyat to sue for a patá or the landlord for a kabúliyat, goes far to show that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the registration offices indicates that writing is commonly used in the creation of new tenancies; and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas."

"When the raiyats were so very careful of their rights in 1793, hon'ble members might safely presume that they are much more so at present, now that their condition has immensely

improved, and there has been a vast progress in the spread of education. Considering what a vast area of land still remains to be cultivated, I confidently submit that no country in the world would derive more benefit than Bengal from perfect freedom of contract in land. In the interests of agriculture, and of the education which Government is so desirous of giving to the people in habits of self-Government, it is essential that perfect freedom should be accorded in this matter. Laws which offer such violence to the natural rules of supply and demand can never be successful in their operation, and it is more than doubtful how far these restrictions to contract would prevent parties from having recourse to shifts and devices for the purpose of evading the law. In reference to this question I shall ask the Council to bear in mind that the original proposal of the Government of India, which receive the sanction of the Secretary of State, was to restrict freedom of contract so far only as it might bar the accrual of the right of occupancy. I therefore move that the clauses of this section which limit freedom of contract beyond questions affecting the accrual of the right of occupancy be expunged from the Bill."

The Hon'ble MR. EVANS said:—"I expected to hear some statement regarding the particular objections to the particular sub-sections mentioned in the amendment. The only one to which I attach real importance is that in which the hon'ble member agreed with us, namely, that a raiyat should not be allowed to contract himself out of the occupancy-right; the others stand each one on their own merits as regards their necessity, and I do not propose to offer any remarks upon them, except two. As regards sub-section (3), clause (g), which is mentioned in the amendment, I will support the motion; but the reason why I do so is that I altogether object to section 40; but inasmuch as that matter has been passed by the Council I won't state my objections at length. I do not think it safe or desirable to entrust to a Sub-divisional Officer or a Collector the question of adjudicating on the expediency of commuting rents in *bhaoli* tenures. There are strong reasons why the tenure has prevailed, and I believe in the wisdom of retaining it. I do not think such an officer who may be a stranger to the district is a good judge as to whether a *bhaoli* tenure should be swept away. Therefore, as I object to section 40, I of course object to this sub-section, which makes inalienable the right of the landlord to make an application to see how much discretion the Revenue-officer has. If he has good discretion, he will refuse the application; if he is an officer with advanced opinions, who wishes to sweep away all the *bhaoli* tenures of the country, he will grant the application; therefore, as far as that is concerned, I will support the amendment. There is one other matter to which I wish to refer, and that is clause (e), under which all raiyats are to have an inalienable right to sub-let subject to the provisions of this Act. With regard to the occupancy-raiyat the question has been discussed, and the arguments are strong in favour of allowing it to a certain extent. We have placed large restrictions, and I think properly so. But this clause goes further; it provides that every raiyat is to have an inalienable right to sub-let. If a raiyat is let in on a written lease, he has to go out at the end of the term, and he cannot give a sub-lease beyond his own term. But with regard to the non-occupancy-raiyat, who has no written contract, he will have, as the section stands, a right to sub-let at fair and equitable rates, subject to the proviso in section 46; he may get a judicial lease, at the end of five years, and a good deal of confusion will be caused. If the clause is not struck out, I think the word 'occupancy' should be inserted before the word 'raiyat.'"

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I support the amendment, and I am sure it does not go far enough. I think there ought to be a distinction between occupancy and non-occupancy-raiyats, and there ought to be no general provision against raiyats and superior landlords as far as possible adjusting their mutual differences without resort to the machinery of the Courts."

The Hon'ble MR. REYNOLDS said:—"I am willing to accept the suggestion which has been made by the Hon'ble Mr. Evans as to clause (e), but I cannot support the motion of the Hon'ble Peári Mohan Mukerji."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. The hon'ble member has nowhere said that these contracts are to be what the contract law requires,—contracts to be made for lawful consideration,—and only such contracts are valid. If this amendment is carried, the effect will be that the occupancy-raiyat, who is under no necessity to enter into a contract under the Bill, whose position is already assured, if he is induced to enter into any contract, will be induced to write away rights already accrued to him. With reference to the remarks which fell from the Hon'ble Mr. Evans, I would not object to a permissive section being entered in the Bill to allow contracts for lawful consideration. Take as an example, with reference to the commutation of rents in kind, if it were to be declared that the tenant may enter into a contract with his landlord not to sub-let in consideration of the landlord allowing him to deliver only one-third of the produce in the future in place of the one-half he has been in the habit of delivering, I would not object to such a clause being inserted; but if the sole object is to permit the tenant to contract himself out of rights already acquired under the Bill, I object; but I do not think at this stage of the Bill such a proposal would be adopted. With reference to the question of sub-letting where a raiyat has been let in on an initial lease, the tenant might be allowed to contract himself out of his right to sub-let. But with reference to occupancy-raiyats, with whom it is not necessary to enter into any agreement, the only result would be the avoidance of the accrual of all rights."

The Hon'ble SIR STEUART BAYLEY said:—"I am sorry I cannot accept the amendment. The hon'ble member bases his motion, first of all, on the ability of the raiyat to look after his own interests. I am unwilling to detain the Council on this subject, but I would remind hon'ble members of the contracts which were read out two years ago by my hon'ble friend

Mr. Ilbert and myself, and which were specimens of 1,000 or 1,200 of the same kind. I can only say, with regard to what fell from the hon'ble member as to the inability of the legislation of 1793 to force raiyats to contract with their landlords, that recent experience has shewn us that modern landlords have at all events been far more successful. I need not enquire into the reason, but it is the fact that landlords can get raiyats to give the extraordinary contracts to which I have alluded, and I do not suppose that anybody who has seen those contracts will doubt that they were given without the exercise of the least discretion on the part of the raiyats who gave them. The hon'ble gentleman objects to legislation framed according to Western rather than Eastern ideas; but the contracts to which I refer are unfortunately drawn up on Western models, but under Eastern conditions, that is to say, they purport to be bargains between equals, but are really extorted under pressure of poverty, or ignorance, and it is precisely for that reason we do not desire to maintain the Western doctrine of their inviolability. The old shape of the pattá did not put any restrictions on the customary rights of the raiyat. These new forms of lease taken from Western models are calculated to break down existing occupancy-rights, to prevent the accrual of occupancy-rights, to make the raiyat pay the whole of the land cesses while the law says he has only to pay half, to make him give up his right to appeal for protection to the Courts. It is because we have seen numbers of contracts with such provisions that I say that without these safeguards, which, as I shall show presently, were in the view of the Government of India when they wrote to the Secretary of State, it would be absolutely fallacious to give them the rights which we are giving them. The hon'ble gentleman has said that in our despatch to the Secretary of State freedom of contract was only to be restricted in regard to the accrual of occupancy-rights. But there is nothing in that despatch to show that what we referred to was restricted to the time antecedent to the accrual of occupancy-rights. The Government of India said:—

'Nor need we dwell on section 20 of the Bill, which provides that no contract, whether entered into before or after the commencement of the enactment, shall in any case debar a raiyat from acquiring a right of occupancy in raiyati lands used for agricultural purposes. Such is the power of the zamindars, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements to which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed: and in this conclusion we have the support. not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers."

"This, the hon'ble member said, referred only to the accrual of occupancy-rights, but your sections go beyond it. In terms this is quite true. But after all what is the occupancy-right? The occupancy-right is made up of a bundle of incidents; and therefore to say that we restrict your contracting yourself out of your occupancy-right, but you may contract yourself out of any or all of the incidents which go to make up that right, means nothing. With regard to what fell from my hon'ble friend Mr. Reynolds, the point is this: where the two parties in the case of a *bhaoli* holding are not both of them willing to continue the arrangement, is it desirable to maintain their relations in such a shape? Whether the proposal for a change of the system under which rent is paid comes from the raiyat or the zamíndár, it is very desirable that somebody should settle how it should be done and on what terms, and we put in the Revenue-officer as the person most able to judge as to the interests of both parties. If we leave section 40 in the law, that is, that either the landlord or the raiyat has the right to go into Court and ask for a commutation of rent, the provision in this section of the Bill is, I think, a necessary one. It is impossible that any contract should prevent a raiyat or a landlord from going into Court, and it would be very wrong to allow it to have that effect. In regard to the other point as to sub-letting, I am quite willing to accept my hon'ble friend Mr. Evans' proposal; and therefore I move that in sub-section (*e*) the word 'occupancy' be inserted before the word 'raiyat.'"

The Hon'ble Mr. Ilbert said:—"I feel some doubt about the proper way of dealing with this amendment. The scope of the Hon'ble Peári Mohan Mukerji's speech is wider than the motion in support of which the speech was delivered; for he does not move the omission of the whole section, and I understand him to admit that there are certain parts of it to the retention of which he would not raise any objection. There is not any amendment on the notice-paper which raises the broad question whether there are or are not certain classes of agreements between zamíndárs and raiyats to which the ordinary law of contract ought not to apply. And I presume that the reason why this question is not raised is because it is almost universally admitted that there are such classes of agreements. We all know the theory on which the ordinary law of contract is based. It presupposes equality between the parties to the contract, full knowledge and appreciation by each party of the nature of the rights to which he is entitled, and a deliberate intention on either side to modify those rights in a particular manner. Gaius and Titius, or Ram Das and Ram Bux, meet in the market-place and strike a bargain, and when they have done so the Courts hold them to their bargain. But the circumstances which lead up to the execution of a kabúliyat by an occupancy-raiyat are of a very different character. The raiyat's ordinary rights, the rights with which a kabúliyat purports to deal, are not based on contract, and the whole notion of their being capable of regulation by contract is unfamiliar to him. His rights are based on occupation and regulated by custom. He did not come in under a lease by which the landlord agreed to let and the tenant agreed to take a specified piece of land, for a specified term, under specified conditions; and if any instrument purporting to be such a lease can be produced against him, it is usually a fiction. He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood,

though they have never been reduced to a definite written form. There is a nebulous borderland between his rights and those of the zamíndár which has, from time immemorial, been the subject of dispute between them, and with respect to which the contest is under ordinary circumstances not unequally waged between persistent worry on the one side and passive resistance on the other. But there are certain central rights which we know very well that the raiyat would not give up except under the pressure of absolute necessity—rights which are essential to his status; and if we found that he has attached his signature or mark to a kabúliyat purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and acceptance on the other, the characteristic elements of the transaction which results in the execution of such kabúliyats as these are pressure on the one side and submission on the other. It is the execution of instruments of this nature that we wish to prevent. We desire to prevent the occupancy-raiyat from contracting or appearing to contract himself out of rights which are essential to his status. We have no desire to make this section more stringent or more comprehensive than the nature of the case requires, and if it can be shown that any of its provisions can be relaxed or modified without any serious risk of allowing the main objects of our legislation to be defeated, I should be most ready to accept the modification."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"Two statements have been made by the hon'ble member in charge of the Bill with regard to which I should like to say something. The proposal which was made by the Government of India to the Secretary of State was embodied in this way—'to declare that no contract shall debar a raiyat from acquiring the right of occupancy in raiyati land.' And the Secretary of State in giving his sanction, confined himself to the suggestion so embodied in that paragraph, because he said:—'I proceed to communicate to you my opinion on the proposals summarised under 13 heads in the 108th paragraph of your letter.' So that there can be no mistake as to what the proposal was to which the Secretary of State gave his sanction. The hon'ble member has advanced the argument that when the Secretary of State gave his sanction to the restriction of the right of contract barring the accrual of rights of occupancy, that sanction extended to the restriction of all contracts relating to every incident which affects the right of occupancy. I submit that that argument should be taken for what it is worth. As regards the other statement made by the hon'ble member that the kabúliyats in the case of the Mymensingh and Pubna raiyats show that the raiyats are too ignorant and helpless to secure their own rights, I submit that unless hon'ble members have all the correspondence, official and demi-official, relating to those kabúliyats placed before them, the Council is not in a position to judge whether very unjust influence or any coercion was used by the landlords for the purpose of getting those kabúliyats. I know that the public Press distinctly stated at the time that members of the service had used their influence to induce the raiyats to repudiate their kabúliyats, that it was not their voluntary act, and that statement has not up to this time ever been contradicted."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for the words "a raiyat" in clause (*e*), sub-section (*3*) of section 178, the words an "occupancy-raiyat" be substituted.

The amendment was put and agreed to.

The Hon'ble MR. HUNTER moved that in section 178, after clause (i) of the proviso, the following clause be inserted, namely:—

"When a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;"

and that the numbering of clause (ii) of the same proviso be altered accordingly.

He said:—"My Lord, I move this amendment to remedy what I believe to be a serious defect in the Bill. The main provisions of section 178, which prevent the tenant's statutory rights from being defeated by special contracts, have my cordial support. But the section very properly accords a particular treatment to the reclamation of waste lands. It enables the landlords to bar the exercise of occupancy-rights during the currency of a reclamation lease—a lease which may run for an indefinite period, and which would probably run for twenty or thirty years. The Bill thus makes provision for the reclamation of waste lands by means of tenants holding under long leases. But it omits to make provision for the reclamation of waste lands by the landlord himself, working with his own servants, or with hired labour. This omission is probably due to the circumstance that the latter class of reclamation has hitherto not been common. But cases of such reclamations have come to my notice, and I am told that their infrequency is due in part to the discouragements under which they are placed even by the present law. In the only case in which, so far as I know, extensive reclamation has been affected by the steam-plough in Lower Bengal, the landholder writes to me that the present law renders such reclamation disadvantageous to the reclaiming landlord; while under the new law no landholder would think of undertaking such reclamation, unless protected by some accidental local tenure like the *útbandi*. Yet there are several classes of reclamation which cannot be carried out by cultivators, but must be conducted by the landlord, or by a combination of neighbouring landlords, if they are to be effected at all. The Council is, I think, agreed that it is the interest alike of the cultivators and of the State that such reclamations of waste land should be undertaken. To add to the cultivated area is the most direct and the most permanent remedy for the great evil in certain parts of Bengal—over-population.

But such reclamations will certainly not be undertaken by landholders if the Bill is allowed to stand as at present. My amendment only proposes to place the landholder who reclaims land at his own charges by hired labour, in as good a position as the landholder who reclaims by means of tenants on long leases. In so doing I desire to say that the amendment has been carefully framed with the intention to cover only *bonâ fide* reclamation of waste land. I hope that the representatives of both the landlords and the cultivators will see their way to accept an amendment, which is submitted to the Council in the interests of both."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I think that in the interest of both landlord and tenant I am bound to support this amendment. It is necessary in the interests of the extension of cultivation that a provision to this effect should be made."

The Hon'ble MR. REYNOLDS said :—"I look with considerable misgiving on this amendment, not so much with regard to its use as to its possible abuse. I am averse to any provision which contemplates restrictions on the accrual of the right of occupancy. The Bill does not, it appears to me, place the reclaiming landlord in so unfavourable a position as the hon'ble mover of the amendment has represented. As long as he keeps the land after reclamation in his own possession and cultivates it by his own servants or by hired labour the profits will be all his own, and when he lets it to a raiyat he can let it on any terms he thinks fit. The landlord has thus full opportunity of remunerating himself for his original outlay of capital. I may add that I feel some doubt whether the clause will have that effect of encouraging improvements which the hon'ble member expects from it. The raiyat may be debarred by the conditions of his lease from acquiring the occupancy-right for a period of 30 years. I cannot think that raiyats who take land on such conditions will make any improvements on it. I don't mean to oppose the amendment, as I sympathise with the object which the hon'ble member has in view, but I do not wish the amendment to pass without raising some note of warning as to what may be its effect."

The Hon'ble MR. AMÍR ALÍ said :—"I support the amendment for the reasons assigned by my hon'ble friend the mover."

His Honour THE LIEUTENANT-GOVERNOR said :—"I take no exception to the principle of the amendment, but I think there is a danger in it outside that to which the hon'ble member alluded. Is it not possible that waste land may come to mean in the eyes of the zamíndár fallow land intended for raiyati cultivation which is in the possession of the raiyat but has been allowed to remain fallow for a number of years? I think the amendment should be safeguarded by the addition of some words or provision which would make it clear what waste land is, so that landlords should not trench on land which may have the appearance of waste land from not having been used for a long time but still belongs to the raiyat."

The Hon'ble SIR STEUART BAYLEY :—"I very fully sympathise with the object which my hon'ble friend Mr. Hunter has in view. I myself threw out in Committee a suggestion somewhat to the same effect. I suggested that where the landlord had broken up waste land himself and cultivated it himself either directly or by the agency of hired servants for 12 years, then he should have it as *sír* or *khámár* land, and he would be in the same position as a raiyat who had done so. The objection which has been taken by His Honour the Lieutenant-Governor that land so reclaimed may simply be cultivated land which has remained fallow for some years, is of some force, and I shall be glad to guard against that by any *explanation* which may be approved by the Council, if any better form of words can be found. But I shall be sorry if the Council should reject the amendment altogether."

The Hon'ble MR. REYNOLDS said :—"Perhaps the hon'ble mover of the amendment will agree to the addition of an *explanation* to the following effect:—'that the breaking up of fallow lands for cultivation shall not be deemed to be reclamation of waste land under this section.'"

The Hon'ble MR. ILBERT said :—"The question of waste land has been considered; the Courts will put the same construction upon it as they do under the waste land rules. I think the term 'waste land' is enough."

The Hon'ble MR. HUNTER said :—"My Lord, with reference to the remarks which have fallen from His Honour the Lieutenant-Governor, I beg to point out that if a definition of waste lands were necessary in this Bill, the necessity has not arisen under my amendment. If that necessity exists, it arises under the preceding clause (*i*) of the proviso, and indeed it would have also arisen at a much earlier stage in the Bill. The Courts must construe the real meaning of the words 'waste land' in my amendment, precisely as they must construe their meaning in the preceding sub-section and in a number of other Acts. But while I object to the meaning of the words being minimised with special reference to my amendment, I wish to state again, and with the utmost distinctness, that my amendment is intended to cover only the reclamation of *bonâ fide* waste land. I an sorry that I cannot accept my friend the Hon'ble Mr. Reynolds' picture of the happy condition of the reclaiming landlord under the present Bill. My hon'ble friend says that if the reclaiming landlord keeps the land in his own hands no occupancy-rights will accrue. But this Hon'ble Council well knows that landholders cannot keep large tracts in their own hands, for cultivation by hired labour; that as a matter of fact they reclaim land not to cultivate it themselves but to let it out to tenants. Well, when a landlord lets out the land which he has himself reclaimed, what will happen under the provisions of this Bill? If he lets it to a substantial settled raiyat, the tenant immediately obtains the complete occupancy-right. If the landlord lets it to a stranger, he takes the risk of getting a bad tenant; but even then the tenant will have all the protection of a non-occupancy raiyat, and the occupancy-right begins to accrue from the moment he enters on the land. It is delusive, under these circumstances, to speak of the reclaiming landlord as being sufficiently

protected. I sincerely hope that the Council will accord to him the protection for which I now ask. I believe that it is in the interest alike of the landholder, the cultivator and the State that this protection should be granted."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the words "or contract" be substituted for the words after "usage" in section 182. He said:—"The object of this amendment is to take homestead or building land out of the scope of the Bill, and to confine the regulation of the incidents of the tenancy of such land to custom and contract. The Bill is avowedly one for the regulation of the relations of landlord and tenant as regards agricultural and horticultural lands. It should not, therefore, concern itself with homesteads. I perfectly agree to the principle that where the homestead forms part of an agricultural holding the provisions of the Bill should apply to it. But what justification can there be for bringing other building lands within the purview of the Bill? It is true that custom is saved with regard to such lands, but, as their incidents are usually governed by contract, great uncertainty will arise if contracts are ignored and the parties left to fight out the nature of a local custom in Court. The result of the provision will be that until the rights of parties are judicially determined, and until it is known whether a particular custom which has been set up by one of the parties is proved or disproved, they will remain in ignorance of their own rights. One of the most harmful effects of such a law will be the encouragement of flimsy and perishable constructions. It is desirable on all grounds that before a man builds a house to live in he should know the nature of the rights he has in the land, and nothing would secure this better than by giving free scope to contract, as at present, in such cases. The Council is well aware that on the motion of Lord Granville papers relating to tenures of building lands, containing much useful information regarding the practice of different countries, were placed on the table of the House of Lords, and they showed no fact more prominently than that unlimited freedom of contract exists in England in this respect, and that the great London proprietors are the best landlords in the world. All considerations, therefore, converge to show the necessity of giving free scope to contract in the matter of homesteads."

The Hon'ble MR. REYNOLDS said:—"I demur altogether to the remarks of the hon'ble member which implied that the section has anything to do with what are ordinarily known as building leases. This is merely a question of the homestead of the raiyat. The possession of a homestead is essential to his status as an agriculturist, and we have evidence in the papers before the Council to show that where a landlord has in some cases had the opportunity of putting pressure on a raiyat whom he has not been able to turn out of his holding but out of his homestead, the power has been abused by increasing the rent. The amendment will have the effect of defeating what is really a great part of the object of this section."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot recommend the Council to accept the amendment. The hon'ble member's speech is calculated to lead the Council very far astray from the point which the Committee had before them. Nothing can be more entirely and wholly foreign to this section than the question of building leases such as those in London, extending it may be to 999 years. This section refers merely to the land on which the raiyat's house is built and which he holds in connection with his occupation as a raiyat, and in regard to which we find in almost every district a different custom prevailing. In some districts he pays no rent; in others he does. In some he acquires an occupancy-right at once; in others the right grows up. In some districts he can be evicted from his agricultural holding without prejudice to his right in his homestead land; in others he cannot. Then there are various customs as to what right he has in the materials of his house. There are different customs existing in almost all districts on points like this, and we found it impossible to frame any law which would not be unjust to one party or another, and it was in the face of these difficulties that the Select Committee decided that the matter should be left to be governed by custom. But where there is no custom which can be ascertained, we provide that it shall be governed by the rules which govern ordinary agricultural leases. If there is one means of pressure greater than another, it is by increasing the rent for homestead land—a power which the landlord can bring to bear when he cannot otherwise touch the raiyat in his agricultural holdings."

The Hon'ble BÁBÚ PEÁRÍ MOHAN MUKERJI said:—"The language of the section does not on the face of it support the view I have taken of the section. If hon'ble members will, however, read the definition of 'raiyat' in section 5, sub-section (2), they will find that, although land might originally have been taken for purposes of agriculture, or horticulture the descendant of the man who originally took the lease would still be deemed a raiyat, although he is a clerk in a Government office or a shopkeeper or a blacksmith. The definition of 'raiyat' is very clear, and there is nothing irrelevant to the argument which I adduced as to the practice in regard to building leases in England; and I think it will be in the interests of the country generally that the change which I suggest should be made."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 186 be omitted. He said:—"Hon'ble members will find that the provisions for penalties contained in this section are altogether one-sided. In the case of a landholder *an attempt* to distrain would be a criminal offence, but in the case of a raiyat an attempt to resist distraint or to remove distrained crops is no offence. The section is also objectionable on principle, on the ground that it converts into criminal offences acts which are otherwise not criminal. The Indian Penal Code is a complete and exhaustive Code in itself. Any attempt to supplement it by definitions of crime in respect of particular transactions which do not otherwise come within its scope, should be discouraged. If there be a criminal trespass let the offender be punished for it; but why

call that a criminal trespass which is in no sense a trespass? Hon'ble members will also observe that the Bill nowhere provides a penalty for removal by the raiyat of crops stored for division or valuation under the dánábandí system."

The Hon'ble SIR STEUART BAYLEY said:—"I must request the Council to think once, twice and thrice before they accept this amendment. This question was one which was taken up by the Bíhár Committee, who said—

'By compelling Bíhár proprietors to adhere to the restrictions which the law imposes on distraint, you would practically deprive them of the only power of distraint which they care to exercise, namely, that of a private distraint or restraint of crops. It is, Mr. Gibbon thinks, better to do away altogether with a right which, if exercised according to the intention of the law, would be of little or no value, and which, not being exercised in accordance with law, has in the past, and may in the future, lead to great abuses. In these views a majority of the members concur.'

"Then with regard to the other acts, namely, preventing or attempting to prevent the reaping, gathering, storing or removing produce, I can only refer the hon'ble member to what Bábú Bimola Churn Bhuttacharji writes as to the system in Bíhár. He says—

'The next engine of oppression in the hands of the zamíndár is not to make the dánábandí (appraisement of crops) at all, but to let the grain rot in the threshing-floor or in the field.' When the raiyats decline to accept the zamíndár's terms as to the share of the produce, the zamíndár declines to make the appraisement. One year's loss of rent is nothing to him (the zamíndár), but to the raiyat the loss of one year's crop means starvation. The grain is allowed to rot in the fields or is eaten up by birds, unless the raiyats come round in time. Another mode of oppression is that after the dánábandí or agorabattai (appraisement or apportionment of the crops) has been made, the zamíndárs do not allow the raiyats to take away their grain.'

"These are the suggestions which we have incorporated in this section. Both the Bíhár Committee and the Rent Commission say it is a real practical evil, and I can say from my own experience that in regard to the dánábandí the amount of damage has been very great, and there is always a difficulty in bringing the question to the decision of the Courts, because it is uncertain where the respective rights of the landlord and the raiyat to the possession of the crop begin and end, and it is therefore difficult for the Courts to say whether the landlord is actually doing an illegal act in stopping the raiyat in his right to reap the crop These are the reasons which led the Select Committee to accept the section as it stands. The penalty is three months' imprisonment or a fine of Rs. 500, which is the same as the penalty for criminal trespass. The hon'ble member said the section was one-sided because the landlord may be punished, but for doing these things the raiyat cannot be punished criminally. We have, however, provided a penalty for the raiyat who interferes with the appraisement or division of the crop in the shape of rent at the highest estimate of any neighbouring crop It is because we hold that the ultimate proprietary right in the grain rests in the raiyat, that we do not punish him criminally for taking action in regard to it.

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sections 191 and 192 be omitted. He said:—"The effect of section 191 will be to exempt a large majority of Government estate from the operation of the rule of twenty years' presumption. Government, while desiring to have their relations with their raiyats regulated by the same code of laws which regulated the transactions of private landlords, should not claim exemption from a rule which has worked so very injuriously to the interests of landholders. One hon'ble member remarked the other day that the presumption which the rule raised was incompatible with the very fact that the estate had never been permanently settled. But because the revenue of an estate had never been permanently settled it is no reason to suppose that there might not be numerous raiyati holdings in it the rents payable for which have never been altered. The periodical assessments of revenue which Government have made in their estates should have made them the more reluctant to claim an exceptional privilege in this respect, as nothing can be more easy for them than to prove variations of rent, if such variations have actually taken place. The exemption of Government estates, therefore, from the operation of this rule of presumption is highly objectionable. It will destroy rights and privileges of raiyats of Government estates which their fellows on the estates of private owners will continue to enjoy, and it will shake the confidence of the people in the scope and justice of a measure which provides one law for the raiyats of private owners and another for the raiyats of the State itself. For the very same reasons section 192 is very objectionable. While in the case of private property a contract fixing the rent of a holding at a certain figure will be in the interests of the raiyat binding on all future proprietors and purchasers, all contracts fixing rents at figures which a Revenue-officer may consider to be not fair and equitable for the time being will be in the interests of Government revocable at the will and pleasure of the Revenue-officer. The provision offers a striking contrast to the restrictions imposed by the Bill upon freedom of contract. It violates the sanctity of contract to the injury of the raiyat and for the behoof of Government, while other provisions of the Bill will nullify contracts in the behoof of the raiyats and to the injury of private proprietors."

The Hon'ble MR. QUINTON said:—"This section really contains the law as it stands at present. My hon'ble friend on this and previous occasions has spoken on the assumption that tenants and raiyats under zamíndárs are in the same positions as those in temporarily-settled estates under Government. The Government, for wise purposes no doubt, has thought proper that the land-revenue, which is the most important item in the finances of the Government, should, in a great many provinces, be temporarily settled from time to time, and in making these settlements we must take into account how far the value of the land is divided between the tenant and the proprietor; that is, the Government consents to give to the raiyats a part of the revenue. I think the arguments used by the hon'ble member do not in the least apply.

There is no permanent settlement; but if you say that, when a man's rent remains unchanged for twenty years, his rent cannot be raised, then it will be impossible for the Government to raise the revenue."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said:—"I do not wish to say anything, because I do not think any argument which I may bring forward will tend to persuade the Council to go against the decision to which the Government have already come."

The Hon'ble MR. REYNOLDS said:—"I feel some difficulty in attempting to answer the argument of the hon'ble mover of the amendment, because I have failed to connect his argument with the sections under consideration. I do not understand that this has anything to do with the twenty years' presumption where Government estates are concerned. The principle of the sections seems a fair one, and is specifically laid down in the Regulations, that the landlord cannot create an interest beyond the term to which his own interest extends. That seems to me to be the principle of these sections, and I fail to see that there is anything inequitable in it."

The Hon'ble SIR STEUART BAYLEY said:—"I think we have a right to complain of the repetition of the statement that the Government has made a separate law for Government estates from other estates. There is no such distinction in reality; all temporarily-settled estates will be exactly in the same position; there is no distinction between the Government and any other proprietor, and the assertion that the Government has made a separate provision for their own estates is simply misleading. The rules to which the hon'ble gentleman objects will apply to all lands by whomsoever held in districts which are not permanently settled. The history of the matter is that it is a part of the existing law, which provides that the temporary settlement-holder could not contract beyond the term of his own settlement; a settlement-holder therefore cannot protect his raiyat against subsequent enhancement in case of the subsequent enhancement of the revenue. That is the law, and it is practically repeated in this section. Then we come to the question of the presumption from twenty years' holding at an unchanged rent. The presumption cannot possibly arise where the revenue, and presumably the rent, is being constantly changed. I do not think the question could be better stated than as it has been formulated by the Rent Commissioners' Bill. The *exception* to section 6 of that Bill says:—

'In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognised in settlement-proceedings by a Revenue-authority empowered by Government to make definitively or confirm settlements.'

"That is to say, where a person has held from the time of the Permanent Settlement there he has a right to go on holding at the same rent, but where you have the rent constantly changed the presumption does not naturally arise that he has held from the Permanent Settlement. It is no idea of our own."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"As a matter of fact we know of several estates which have been permanently settled long after 1793. Still when a question under the rule of presumption arises it has been authoritatively held that the Permanent Settlement which is meant in this connection is to be taken as the Permanent Settlement of 1793. So that the argument which has been advanced by the Hon'ble Mr. Quinton on the ground that where there is no permanent settlement there can be no question of presumption falls to the ground. Where a temporarily-settled estate is in the hands of a farmer or other person in behalf of the Government, it is the Government that will derive the whole benefit of the enhancement that will take place in that estate; therefore whether an estate is in the hands of the Governmet or a farmer, if it is not a permanently-settled estate it must for all intents and purposes be taken as an estate in which the Government is most beneficially interested. The justification for the existence of that section in the Bill is based on the argument that it finds a place in the Rent Commissioners' Bill, and the justification for section 192 is based on the fact that it is the existing law. If these arguments are allowed to prevail in the case of all sections that are contained in the Bill and which have been omitted from it, we shall have no cause for complaint."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the words relating to Regulation VIII of 1793 in Schedule I be omitted. He said:—"The sections of Regulation VIII which the Bill contemplates repealing are the very sections which regulate the relations of landlords and tenants. Next to the rules fixing the revenue in perpetuity, these sections form the most important rules of the Permanent Settlement. If the object of the present measure is 'to restore the raiyats to their original position,' as it is avowed to be by Her Majesty's Secretary of State, nothing could be more incompatible with that object than a repeal of the sections in question. In the interests of both of landlord and raiyat I think these sections should not be removed from the Statute-book."

The Hon'ble MR. ILBERT said:—"The first schedule merely contains, in accordance with our usual practice, those sections of the existing Regulations which will be superseded by the present legislation. The only effect of the hon'ble member's amendment would be that the sections which he wishes to omit from the schedule would speedily find themselves included in a schedule to a Bill framed for the purposes of Statute-law revision. If my hon'ble friend will refer to the first volume of the Lower Provinces Code, he will find that my learned predecessor, who has done so much useful work in removing obsolete matter from the Indian Statute-book, has freely laid a sacrilegious hand on the Permanent Settlement Regulations. And if he were

to turn to the English Statute-book he would find that the sacrilegious hands of Statute-law revisers have been laid on an enactment which is not less famous than the Permanent Settlement, on the enactment which appears in the authorized edition of the English Statutes as 25 Ed. I, caps. 1 and 29, but which is commonly known as Magna Charta."

The amendment was put and negatived.

The Hon'ble BÁBÚ PRÁRI MOHAN MUKERJI moved that in Schedule III, column 2, for the words "two years" the words "one year" be substituted. He said:—"The present law is that when a raiyat has been dispossessed by a landlord he may sue to recover possession within one year from the date of dispossession. That is the ruling of the High Court, and its authority goes to remove any doubt in the wording of the law itself. The effect of substituting the period of two years for one year will be to allow independent rights to grow up in the mean time and thus to sow the seeds of litigation. I submit therefore that the present law should be maintained, and that by extending it to two years it will allow new rights to be created, and thus give rise to litigation and to very great complication as regards the determination of the title both of the person who has acquired rights and the person who has been ousted by the zamíndár."

The Hon'ble SIR STEUART BAYLEY said:—"The words as they stand in the schedule are in conformity with the policy of the Bill. It has been deliberately decided to legislate that a raiyat who is supposed to have abandoned his holding and has been treated as such might within a period of two years apply to the Court to reinstate him on payment of such costs as may seem fair and equitable; it has been decided that two years is a better period than one year. We leave the occupancy-raiyat two years, a non-occupancy-raiyat six months, to apply to be reinstated in cases in which the abandonment may be found to be involuntary or incomplete."

The Hon'ble MR. EVANS said:—"I am informed that the hon'ble member will be ready to accept a similar wording in section 43 as in section 29. Casting my eye over the Bill I find that the alteration is necessary, inasmuch as a very large number of rent-engagements are not in writing."

The Hon'ble SIR STEUART BAYLEY said:—"I am prepared to put in section 43 words similar to those in section 29."

The Hon'ble BÁBÚ PRÁRI MOHAN MUKERJI, having accepted the proposal so made, by leave withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY moved that the following proviso be added to section 43:—

"Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY moved that in section 50, sub-section (*1*), before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 52, sub-section (*1*), clause (*a*), before the word "holding," in two places where it occurs, the words "tenure or" be inserted;

that in the same sub-section, clause (*b*), before the word "holding," in two places where it occurs, the words "tenure or" be inserted;

that in section 52, sub-section (*2*), clause (*a*), the words "tenure or" be inserted before the word "holding"; and

that in section 52, sub-section (*4*), before the word "holding," in the two places where it occurs, the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 53, for the words "tenure-holder or raiyat" the word "tenant" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 61, sub-section (*1*), before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 89, before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 90, sub-section (*2*), clause (*a*), the words "tenure or" be inserted before the word "holding."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 108, sub-sections (*1*) and (*2*) for the words "under the last foregoing section" the words "under this chapter" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the proviso to section 108, the words "tenure or" be inserted before the word "holding" in the two places where it occurs, and the words "tenures or" be inserted before the word "holdings."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 111, clause (*b*), for the words "local" the word "civil" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 119, for the words and figures "sections 105, 106, 108 and 109" the following be substituted:—"sections 105 to 109, both inclusive."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 125, sub-section (*3*), for the words "on the outer door" the words "on a conspicuous part of the outside" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 134, sub-section (*1*), after the words "to be made" the words "from time to time" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 145, after the words "every such suit" the words "or application" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 145 the words "or in which the application is made" be added.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 158, sub-section (*1*), the words "held by a tenant" be omitted;

that after the words "the landlord or the tenant" the words "of the land" be inserted;

that in clause (*a*) the words "held by a tenant" be omitted;

that after clause (*a*) the following be inserted:—

"(*b*) the name and description of the tenant thereof (if any);

and that clauses (*b*) and (*c*) of the same sub-section be lettered (*c*) and (*d*) respectively.

The amendments were put and agreed to.

The Hon'be SIR STEUART BAYLEY also moved that in sub-section (*1*) of section 173, after the words "in execution of which a" the words "tenure or" be inserted;

that in sub-section (*2*) of the same section, before the word "holding" the words "tenure or" be inserted; and

that in sub-section (*3*) of the same section, before the word "holding" the words "tenure or" be inserted.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 174, sub-section (*2*), after the words "setting aside the sale" the following be added, namely:—

"and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set side."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 180, sub-section (*1*), clause (*a*), for the word "and," in the second place where it occurs, the word "or" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 185 the following be added, namely:—

"Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 190, sub-section (*6*), after the words "from time to time" the words "subject to the sanction (if any) required for making them" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 195 (*e*), for the words "which is not expressly repealed by this Act" the words "in so far as it relates to those tenures" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the Form of Receipt in Schedule II, for the words "Raiyat's portion" the words "Tenant's portion," and for the words "Raiyat's part" the words "Tenant's part," be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in Schedule III, Part III, the following words be added to clause 6, namely:—

"in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended be passed.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said:—"We have now, my Lord, reached the final stage in the discussion of this Bill. Nothing that I can say will, I am aware, influence

this Council in their determination to pass the Bill; but in justice to myself I feel bound to make one or two observations. I have opposed the Bill from the very first, because I considered it an impracticable, unfair and unworkable measure, and, viewing it in its final form, I am still of the same opinion. My hon'ble friend Bábú Peári Mohan Mukerji and myself, however weak we may be in debate, have certainly one advantage over the majority of the members of this Council—in the practical experience that we possess of zamíndári management. I yield to no one in my desire to see the raiyats protected from oppression, but it is my deliberate opinion that this Bill will not accomplish this object; on the contrary, I believe that the legislative safeguards which you have provided, the constant intervention of Revenue-officers in all the details of agricultural life, will lead to the most widespread confusion, and will be as disastrous to the raiyats as to the zamíndárs themselves. My hon'ble friend and myself have endeavoured, to the best of our ability, to point out these dangers to the Council, but our proposed amendments have, almost without exception, been rejected; and the reasonable hopes that we had entertained in the moderation of the Council have been disappointed. I view with the deepest concern the outlook before us. I dread the passions and animosities which this legislation will kindle and inflame. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Such vast innovations cannot be introduced into the rural economy of the province without exciting great commotions. I can only hope that these anticipations may not be realised; but, whatever may be the result, I have, at any rate, the satisfaction of feeling that I have acted as the true friend of my country and the Government in warning you of the political dangers which I believe underlie the proposed legislation."

The Hon'ble Mr. Evans said:—"I will not trouble the Council at any length at this stage. I agree with the majority of the Council that the main provisions of the Bill are beneficial. I think that the sections which give to occupancy-raiyats facilities in proving the status which they hold, the changes we have made in favour of landlords as regards the grounds of enhancement, and the provisions in regard to the preparation of a record-of-rights, thus preventing confusion and diminishing litigation, are all beneficial, and I think that the necessity for legislation has been clearly made out which would alone have justified any large change in the rent law which affects the well-being of so many millions. The task has been one of great difficulty, and our success cannot be more than partial. The Committee and the Council have done their best to perform the task which was forced on them, and I support the motion that the Bill as amended be passed. There are some minor points on which I hold a different opinion from the majority of the Council. And there is one point on which there is an irreconcilable difference between me and the majority, and that is the question of the limit on enhancement out of Court. I will not trouble the Council with any repetition of what I have said on this point, but I will point out that the effect will be this. It is perfectly certain that under this very law a large number of landlords will be entitled to enhancements at much higher rates than 12½ per cent.; and when a landlord has taken the raiyats of one village into Court, and has established his right to enhance their rents 30, 40 or 50 per cent., the raiyats of the next village will say 'Don't take us into Court, but take an enhancement of 15, 20 or 25 per cent. and we will agree.' The Council have, for reasons which appear to me to be wholly insufficient, enacted that such contracts shall be void, although the raiyats may be convinced that it will be to their interest to consent to an enhancement of their rent to that extent. By this law the zamíndár is forced to take them into Court; if he does not, the result is that, if he were to take kabúliyats by consent at 15 per cent. and then put his finger on their crops to realize the rent they have consented for their own advantage to pay, he will be liable to a fine of Rs. 200 for every such exaction, and for three years it is open to the raiyat to repudiate. I cannot believe that such a state of things is desirable. I am satisfied that the raiyat is the best judge of when it is to his advantage to keep out of Court. When a raiyat has amicably agreed with his landlord to an enhancement exceeding 12½ per cent., I cannot think it right that the contract should be void. I think the provision is wholly unjustifiable and useless. There is therefore this difference between me and the majority of the Council I should not however be justified in voting against the Bill, which, a I have said, I consider to be on the whole beneficial, on account of one of its provisions with regard to which I hold a different opinion from the majority of the Council. But I still hope that when the Act goes before him the Secretary of State will make his approval of the Act conditional on the repeal of this clause, or will strongly represent to the Executive Council the necessity of introducing a Bill for that purpose."

The Hon'ble Bábú Peári Mohan Mukerji said:—"Remote as is the expectation—remote beyond remoteness—of inducing Your Lordship and this Hon'ble Council to agree to a direct negative of the present motion of the hon'ble member in charge of the Bengal Tenancy Bill, I deem it my duty to entreat Your Lordship and this Hon'ble Council to pause before passing the Bill. It has been observed by a high authority, Jeremy Bentham, that 'the legislator is not the master of the disposition of the human heart; he is only their interpreter and their minister. The goodness of the laws depends upon their conformity to general expectation. The legislator ought to be well acquainted with the progress of this expectation in order to act in concert with it.' Allow me, my Lord, to ask, has the Bengal Tenancy Bill satisfied the expectations either of the landholders or of the raiyats? The resolutions passed at meetings held in different parts of these provinces, the numerous memorials which have been submitted to Your Lordship by landlords and raiyats alike, and the public opinion which has found expression in every section of the Native and Anglo-Indian Press, give an emphatic negative to the query. The landholders stand aghast at the dreadful vista of unmerited and uncompensated loss of power and prestige, price and produce, which the measure threatens them with, trembling at

the idea of the pains and penalties, the law-suits and litigation, of which they are to reap a plentiful crop, involving zamíndár and raiyat in one common ruin. Nor are the raiyats more appreciative of the benefits intended for them. They loudly express their consternation at the prospect of a law conceived with the best intention for their benefit, but which, they think, will actually make their position much worse than at present. My Lord, in the debates on the Bill my position was an embarrassing one—an existence on sufferance in a Council commanding an overwhelming majority against me, and counting amongst their number the ablest and most distinguished members of Her Majesty's Indian service. In spite of Your Lordship's very kind and reassuring expressions of appreciation of my position, the consciousness of overwhelming odds against me never left me for a moment, creating a perpetual depression of spirit and subtracting much from my usefulness. Nevertheless, I endeavour to show that the Bill ignores the original scope and object of an amendment of the Rent Law, that it is based on assumptions which are indignantly and vehemently denied by landholders, that some of its provisions make uncalled-for inroads upon vested rights of property, and others militate against conclusions arrived at after careful enquiries conducted under the paramount authority of the British Parliament, and that it is a measure eminently calculated to foment quarrels and disputes, and to sow broadcast the seeds of litigation. I fully appreciate the desire of the hon'ble member in charge of the Bill that there should be a finality at some stage of these discussions, but the passing of a measure which is disliked by all classes connected with the land is not likely to allay the agitation which the discussions regarding it have given rise to. Let us not cry peace where there is no peace. Let us bear in mind that in the exercise of the legislative function in questions of such magnitude, complexity and importance, where every word and sentence we seek to clothe with the authority of law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. The question which I would beg Your Lordship and this Hon'ble Council to consider is, whether it is desirable to pass, without further enquiry and deliberation, a measure which it has been publicly said would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown. Should this Hon'ble Council decide upon passing the measure, I beg Your Lordship's permission still to express a hope that Your Excellency will be pleased to consider whether this is not properly one of the cases, contemplated by the Indian Councils Act, in which Your Excellency might reserve your assent for the signification of the pleasure of Her Gracious Majesty upon it."

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—I had no idea that we should be called upon to vote to-day for the passing of the Bill. After was has fallen from several hon'ble members in this Council in reference to the shaping of the measure in the Select Committee, and when, as the Hon'ble Mr. Reynolds once or twice remarked during the discussions in Council, that certain principles had been laid down in Committee which he thought were not to be departed from, I saw it was vain to hope that any radical change would be made on some points which in my opinion were clearly a departure from the law as it is enunciated in the Acts of 1859 and 1869. In this contingency, and having carefully looked into the subject, I find the position is one the difficulty of which has been estimated by one of the learned Judges of the High Court, Mr. Field, in this sentence. He says:—'We ought not to interfere with existing rights which have been the creations of our own administration operating upon the natural progress of the country,' and he held that no case had 'been made out for disturbing the landmarks of property,' This remark applies, as far as I am concerned, to the position held by sub-raiyats and non-occupancy-raiyats. I do not think either of these classes fill any acknowledged position according to the customary law of India, and I do not except Bengal in making that statement. I speak subject to correction, but, having studied the land laws of nearly all the Provinces, I do say that both these classes of people are new creations. And I do not think a sufficient case has been made out for their being brought in in addition to the large and varied interests we have already got in Bengal. On the other hand, I think, having left the security of the raiyats in the shape of registered contracts, and having enacted the new sections 19, 29 and 43, we have let in a wide door, as I said when speaking to one of the sections, which we might have closed no doubt by inflicting a certain amount of hardship; but that door would have protected a very large number of raiyats. And, on the other hand, we have for the first time enacted provisions with reference to the accrual of rights and the non-accrual of rights in places where no rights have ever existed, as in the case of waste lands; and although the amendment which was carried to-day in reference to the reclamation of waste lands will give protection to a certain extent, I regret the Council should have hesitated in carrying through some provisions which would have been of very great assistance to the Government and have acted as a direct incentive to vast improvements in landed estates. I see no reason whatever, where no vested interests are concerned of any class of raiyats, why we should forbid people to enter into contracts which would have the protection of registration which I have referred to, and which, while serving the interests of both parties to the contract, will assist the progress of the country.

"A good deal has been said in regard to the agitation in regard to this Bill. To both sides I would say that they ought now to apply themselves to the honest working of the provisions of the Bill which will be passed to-day. For myself I think the Bill will have an indirect effect in the promotion of litigation to an extent that I almost fear to contemplate. There is not a single provision, so far as I can see, in any of the larger departments of the

Bill which leaves it to the parties to settle their own interests by amicable agreement. This is a portion of the Bill which I have failed to understand. It is possible that, not knowing the details of the enhancement law and the law of contracts and possibly of other departments which have been amended by this Bill, I have not been able to follow one side or the other. But I have read the papers very carefully, and I think, and the district officers all think, that litigation will be the result. While, therefore, I shall not oppose the passing of the measure, I am sorry to say that I do not see how I can support it."

The Hon'ble Mr. Reynolds said:—"Every member of this Council must be impressed with a sense of the responsibility which attaches to the vote he is about to give on this motion, and this applies with special force to those members who are more closely connected than the rest with those provinces to which the Bill will extend—the provinces of Bengal and Bíhár. For myself, I may be permitted to say that I approach the question with a deep feeling of this responsibility, a feeling proportioned to the magnitude of the interests at stake, and to my recognition of this Bill as the most important legislative measure undertaken by the Government since 1793. The experience of my official life enables me to appreciate the difficulty of the problem we have been called upon to solve. I am one of the few members of this Council who have tried rent-suits under the old Regulation of 1799 and under Act X of 1859. As Superintendent of Revenue Survey in the eastern districts I have been called upon to deal with the complicated system of land-tenure which prevails in that part of the country. I have been in executive charge of two districts which have been prominently noticed in the course of these debates,—the districts of Midnapur and Mymensingh,—and it has been my duty, as a member of the Board of Revenue, to superintend the administration of Government estates and of the properties under the charge of the Court of Wards. If my experience has taught me nothing else, it has at least taught me that the relations of landlord and tenant in those provinces present questions of a very difficult and complicated nature—questions covering a vast field, and demanding an intimate acquaintance both with the history of the past and with the circumstances of the present, but at the same time questions which are closely bound up with the national life, and which the statesmen and legislators of Bengal ought not to ignore or to put aside. If it would be presumptuous to hope for the enactment of a perfect rent law, it would be a faint-hearted neglect of duty to shrink from an attempt to frame the best law we can.

"To one who endeavours, in this spirit, to gather up the work of legislation from the point at which the authors of the Permanent Settlement concluded their labours, it will probably appear that, while nothing fundamental requires to be changed, the altered conditions of the present day call for a different method of treatment from that which was thought sufficient in 1793. It is for us to prescribe definite rules where the legislators of that day were content to lay down broad general principles. Their Regulations were sometimes as much homilies as law; and the real object of them is to be gathered rather from the opening preamble than from the sections which contain the specific enactments. To us, who can look at their legislation in the light of subsequent events, it is remarkable to observe how much they seem to have trusted to general declarations, to enunciations of the line of conduct which the Governor General in Council expected proprietors of land to pursue, and to a belief that such matters as were left undefined would be arranged by mutual forbearance and pacific agreement. We know now that some of their anticipations were signally falsified by the results. But they were careful to reserve to their successors, in clear and explicit terms, the power of further legislation; and the broad lines of their policy were so wise and equitable that it may safely be said that it will never be necessary for the Indian lawgiver to depart from, or tamper with, the principles which pervade the great settlement of Lord Cornwallis.

"It, therefore, seems to me a great merit in this Bill that it aims at no other objects than those which the authors of the Permanent Settlement had in view. The particular means by which those objects are to be attained have varied, and may again vary hereafter, as the circumstances of the country change. What is necessary is not to subvert but to supplement the venerable law, to fill in its outlines, and to apply the spirit of its provisions to the remedy of evils which have grown up since its promulgation. The opponents of the Bill may fairly be challenged to point to a single section which contravenes this principle. The Bill is, indeed, little more than a modernized version of those Settlement Regulations which deal with the question of landlord and tenant; it translates the law of 1793 into the language of our own day, with such amplifications as experience has shown to be necessary to prevent its meaning from being misunderstood. I think that such considerations as these afford a conclusive answer to those who complain of this Bill as an infringement of the compact which Government made with the zamíndárs in 1793. What was guaranteed to them was that their public assessment should be fixed for ever, and that they should enjoy exclusively the fruits of their own good management and industry. They were never promised that they should enjoy the fruits of the good management and industry of others. It may be true that the Regulations of 1793 do not say a word about rights of occupancy or compensation for improvements; but this is merely because the authors of the Permanent Settlement used a different language, not because their language bore a different meaning. It may be true that the legislators of 1793 laid great stress on the delivery of pattás, and that there is no corresponding provision in this Bill; but this is because the object which they sought to attain by this means can now be more effectually secured by provisions of a different kind. I have dwelt at some length upon this topic, because in a matter in which the good faith of the Government has been challenged, I think it desirable that the members of this Council should speak with no uncertain sound. I do not desire to detain the Council with a detailed review of the other objections which have

been brought forward against the measure. I believe those objections admit of an answer equally complete, and I welcome the Bill as an earnest and sincere attempt to deal with the questions in issue upon the subject.

"It is an earnest and sincere attempt, but I fear it is nothing more than an attempt. I have already said in the course of this debate that I do not consider this Bill as a complete or wholly satisfactory measure. While I acknowledge the improvements which it introduces in the existing law, it seems to me to fail in giving that adequate protection to the raiyat which the authors of the Permanent Settlement reserved the right to give, and which, in my opinion, the circumstances of the country require should be given now. I believe that time will shortly bring these defects clearly to light, and will show the necessity for further legislation. The character of that legislation cannot be precisely indicated now. I feel some doubt as to the effect of the provision which confines the occupancy-right of the settled raiyat to the village. I think it probable that it will be found necessary to remove from the law all reference to the prevailing rate as a general ground of enhancement. But there are two questions in regard to which I feel no doubt that the provisions of the Bill are altogether inadequate, and that experience will show them to be so. These are the questions of the gross-produce limit of rent, and of the status of the non-occupancy-raiyat. The provisions of the Bill will greatly stimulate and facilitate enhancements and this not only where such enhancements might fairly be given, but in areas in which rents are already too high. The Bíhár raiyat, who is already paying a rackrent, will find himself exposed to a further claim on the ground of a rise in prices. The most effectual safeguard (the only safeguard, so far as I know, which has as yet been suggested) is the enactment of a rule which would limit the maximum rent to a fixed proportion of the produce in staple crops. The Council were possibly right in deciding that the evidence before them did not justify the enactment of such a rule, but I cannot help regarding the omission of any such safeguard as a serious blemish. Then, with regard to the non-occupancy-raiyat, I admit that a landlord ought to have some power of choosing his tenants, but he should not be allowed to exercise it capriciously, or to use it as a mere engine for the extortion of a higher rent. The provisions which I believe will be found necessary for the non-occupancy-raiyat are briefly these—the initial lease should be for a period of not less than three years, and at the end of that term the landlord should be required to elect once for all whether he will evict the tenant or allow him to stay. If he determines to evict, he should be required to pay reasonable compensation. If he decides to let the tenant stay, the raiyat should have a right to hold for a further term of 10 years at a rent to be mutually agreed upon, or, in case of dispute, to be fixed by the Court. At the end of that term the raiyat would have acquired occupancy-rights, and would come under the provisions of the ordinary law. In these respects I look upon this Bill as seriously, perhaps dangerously, inadequate. But this need not prevent my supporting the motion that the Bill shall pass. If my apprehensions should be verified by the results of the working of the Bill, it can be supplemented by such further legislation as circumstances may show to be necessary. In the meantime I am contented to accept it as an instalment of what is required in order to put the relations of landlord and tenant in these provinces on a secure and permanent footing."

The Hon'ble Mr Hunter said:—"My Lord, I had not intended to say anything further at this stage. But a remark which has just fallen from the Hon'ble the Mahárájá of Durbhunga compels me, as a member of the Select Committee, to make one observation. The Hon'ble the Mahárájá has just told us that his 'amendments have, almost without exception, been rejected.' This is, perhaps, due in part to the circumstance that neither in the Select Committee nor in this Council have we had the advantage, with a few exceptions, of hearing the Hon'ble the Mahárájá's arguments in support of the amendments which stood in his name. Both in the Select Committee and in this Council special facilities have been given to his friend and my friend, the Hon'ble Peári Mohan Mukerji, to bring forward the Mahárájá's amendments in his absence. The Hon'ble Peári Mohan Mukerji largely availed himself of these facilities in the Select Committee, and I appeal to him whether he was not fairly and patiently listened to. But in this Council the Hon'ble Peári Mohan Mukerji has not seen fit to bring forward and support by argument the majority of the amendments standing in the Mahárájá's name. The result is that a number of the Mahárájá's amendments have been withdrawn by the Mahárájá himself on the occasions when he was present, and a still larger number have not been put in his absence. It is, therefore, incorrect to say that the Hon'ble the Mahárájá's amendments have, with scarcely an exception, been lost. A great proportion of them have not come before the Council at all."

The Hon'ble Mr. Amír Alí said:—"The issue involved in the present motion is one of such magnitude, fraught with such serious consequences for good or for evil to the agricultural classes in this province, that with all my desire not to inflict another speech on this Hon'ble Council I cannot record a mere silent vote. I have received many telegrams from the Mufassal asking me to urge on this Council the expediency of postponing the passing of this Bill. And it is, therefore, especially necessary I should explain my reasons for supporting the present motion. I have already stated that I entirely approve of the principles embodied in the Bill. I have objected to some of the main provisions on the ground that they either gave a very inadequate security to the classes for whose protection it was chiefly intended, or were likely to prove mischievous in their tendency to the raiyats. My strongest objection was to the ground of enhancement founded on the basis of increase in the prices of food-crops. I still maintain that this ground of enhancement will prove disastrous before long to the raiyats of Bengal and Bíhár. I had hoped that some of the objectionable features to which I ventured to refer would

be removed before the final vote was taken. That has not happened. Still I do not feel I would be justified in withholding my vote from the present motion. The difficulties which are springing up on all sides in consequence of the tension of feeling between the classes chiefly interested in the passing of the measure make any further delay undesirable. Bearing in mind the powers reserved to the Local Government under section 196 to pass any enactment which the circumstances and exigencies of the moment may call for, I believe that this legislature has provided a sufficient remedy for the evils likely to arise under the provisions of the present Bill. Looking at the Bill from this point of view, I have not much hesitation in supporting the present motion. I regard it as a step in the right direction; further experience will show its defects and shortcomings, its difficulties and dangers. I trust to the Bengal Government to remedy these defects the moment the necessity for doing so becomes urgent."

The Hon'ble MR. GIBBON said:—"I have no intention or wish to detain the Council with a long speech by entering into the merits of the Bill. But I believe the Bill is on the whole a good Bill, and will be beneficial in its operation. There are, however, some sections of the Bill, but very few, on which I differed from the Select Committee; I had hoped that these sections would have been amended, but bow loyally to the decision of the Council with regard to them. The Bill will make great changes in the mode of transacting business, and it will take time to make them. I will only express the hope that the Government, after the Bill is passed, will see its way to making litigation cheaper and more within our means."

His Honour THE LIEUTENANT-GOVERNOR said:—"I can congratulate the Government of India, the Government of Bengal and the Province generally that this Bill has reached that stage at which from the acceptance of the motion now before the Council it will pass into law. It has been a labour of great research and toil for more than ten years. It has occupied the minds of men of different experience and of different opinions regarding the land-revenue system and landed tenures in Bengal; and in the consideration of which Natives and Europeans, officials and non-officials, zamíndárs and planters, and even the raiyats themselves, have been represented. It has been computed that the papers connected with the discussion and passing of Act X of 1859 could be collected in a volume not larger than the one in my hand; and it is a matter of fact that the literature connected with the measure which we have now before us would fill the shelves of a moderately large sized library—so wide has been the enquiry, so extended the investigation and so general has been the public interest affecting the great problems at issue in this legislation. Again, I have seen it stated that the authorship of the Bill rests with several different persons. I have seen it attributed to the exalted nobleman, Lord Ripon, who has lately gone from among us; I have seen it attributed to the hon'ble member, Mr. Ilbert, at present in charge of the Legislative Department, to the Hon'ble Sir Steuart Bayley, and to myself, and to several other gentlemen both in and out of this Council. The fact, however, is that the origin of this measure goes much further back than that, and if any one cares to look into the earlier records on the subject he will find that the first warning note dates as far back as 1864, in the days of Lord Lawrence; and I believe that every Viceroy, and and I am certain that every Lieutenant-Governor since that time, has had something to do with this large and important measure. Therefore, the contention which the Mahárájá of Durbhunga and Bábú Peári Mohan Mukerji have raised on the subject of inadequate consideration and imperfect examination of the Bill seems to me to be absolutely untenable. The Mahárájá of Durbhunga tells us that the Bill will be found to be impracticable, unfair and unworkable; that it will not protect raiyats, because the Revenue Courts will be constantly interfering; and he argues, and argues apparently in all sincerity, that a condition of things which would leave the raiyats at the will of the zamíndár is the only and best solution of the difficulties of the case. His contention apparently is that the self-interest of the parties concerned is the best security against all evils. Now I wish to point out that that great nobleman who looks down upon us in this Council Chamber from that picture with such a genial countenance, when he carried out the Permanent Settlement, was actuated with this very idea that the self-interest of the zamíndárs would always lead them to act with moderation and equity for the good of their raiyats and tenants. Proceeding on that principle he refused to entertain the proposals advocated by Sir John Shore and others of his advisers, that in carrying out a scheme for the settlement of the revenue he should endeavour also to legislate on the settlement of rents. His notion was that a Permanent Settlement with the zamíndárs would tend to the creation of a landed aristocracy throughout the country much in the circumstances of the English country gentleman, and that the self-interest of one in that position would clearly lead him to reside on his own estates, to extend cultivation, to expend capital on improvements, to settle the rents of his raiyats and to generally establish the rights of all classes of cultivators on his property; and thus to bring about all the benefits which self-interest induces. But what were the results? Certainly none of these anticipations were realized. Within a very few years of the passing of the Permanent Settlement law the preamble of Regulation VIII of 1819 shows us that the zamíndárs had become absentee proprietors and mere rent-receivers; they had abnegated all their rights and responsibilities as landholders; they had created tenures of all degrees—patnís, dar-patnís, se-patnís and the like, each in their turn permanent, heritable and transferable tenures; and at the end of this long string of intermediate holders came the unfortunate raiyats, by whose toil this whole intermediary system had to be supported. Thus the main object of Lord Cornwallis' Permanent Settlement was entirely lost. Then we come to Act X of 1859, which was the first serious attempt to break in on the rule of absolutism which the uncontrolled zamíndárí system had brought about. The legislation of that year was an earnest effort to secure the right of occupancy to which the common law of the country had entitled him before. A very few years after that law was

passed the zamíndárs found a way to avoid the accrual of the occupancy-right, and with the help of the Courts they did avoid it; they shifted the raiyats from their lands to such a degree in all parts of the province that the Government had to take up seriously the necessity of legislating for the maintenance of the raiyats on their ancestral holdings. That was the origin of the present Bill and in giving effect to it I do not see how it can be argued that we are going out of our proper sphere of legislation; the idea of leaving these two unequal parties to settle their affairs between themselves the experience of the past shows to be impossible. It may be that the passing of the Act will, for a time at least, create some uncertainty in the minds of men. But my hope is that, as power is given to the Local Government, with the sanction of the Governor General in Council, to fix the date on which the law is to be put into operation, a period of at least six months will be necessary for the framing of the rules which are required to be passed under the Act, and for the necessary preparation for its introduction. The best chance of the success of the measure will be the attitude of the zamíndárs towards it; but I hope they will soon realise the fact that their vested interests are not attacked in any degree, and that they owe a duty to the raiyats in respecting the rights which appertain to them."

The Hon'ble Sir Steuart Bayley said:—My Lord, I shall not detain the Council long, but I have a few remarks to make in reply to some of the points raised by different hon'ble members in the course of this debate. I have found my position throughout the debate somewhat difficult, because I have had to answer two fires from entirely different directions, and now again on one side I am told that the measure is impracticable and unfair, that the Council have rejected reasonable proposals and modifications, and that the Bill is not in conformity with general expectation. On the other hand I am told that it is not adequate to give the protection which is required. It is a little difficult for me to answer by one set of considerations both these attacks from different points of view, and first I wish to refer to what has fallen from the hon'ble member opposite (Bábú Peári Mohan Mukerji), who has undertaken the burden of defending the interests of the zamíndárs, and has explained to the Council that he felt his existence here to be on sufferance, and suffered from the depression which such a position naturally causes. I can only say, speaking, I am sure, not only for myself, but for the Council generally, that having regard, both to the ability with which he has debated the question, the moderation and yet the undaunted persistence with which he has upheld the zamíndárs' interests, the admirable patience and temper with which he has supported his own case, very frequently in a minority of one and deserted by all from whom he might have expected assistance, I can assure the hon'ble gentleman that I am sure the Council must all consider the zamíndár's party could not have had an abler representative in this Council or one whose conduct of the debate could have so thoroughly won their respect. There is one point which he only touched, but which was specially brought forward on a previous occasion by the Hon'ble the Mahárájá of Durbhunga, and which is perpetually repeated in the Press, to the effect that because only three members of the Select Committee signed the report without some reservation of special points, therefore the Bill has really the authority of only three members. This has been repeated so persistently, and is so likely to do harm when the facts are not properly understood, that I must, although the argument put forward is so unreasonable and unfair as to amount almost to an insult to the intelligence of the Council, ask your permission to say a few words in regard to it. The Committee consisted of more than half the members of this Council, and it included only two representatives of the Executive Council. Every Additional Member except the hon'ble member who represents Madras, the hon'ble member who represents Bombay, and one other hon'ble member who is not here to-day, was on the Committee; and the Executive Council, as I say, was represented only by Mr. Ilbert and myself. Then, in addition to the fact that eleven out of the whole twenty members of this Council were on this Committee, which is a very unusual number for a Select Committee, and consequently necessitated considerable divergence of opinion, I would point out that we had altogether something over 60 sittings, and I have been through the notes of the Committee's proceedings, and I find that at each of these sittings on an average we decided from 15 to 18 motions. Thus we came to something over 1,000 decisions. Now, is it reasonable to suppose when 1,000 points are brought before a Committee on which there are 11 representatives, that there would be unanimity of opinion? Is it reasonable to suppose that because in various points we differed that therefore the majority were not in accord as to the main questions of this Bill being a just or right and proper measure? I think, if you will consider what the difficulties in the way were, how impossible it was to get agreement in all things, in the multitude of minute points that came before us, I think you will see how utterly unfair and unreasonable the argument is that because upon some points a good many of the members, having been in the minority, retained their opinion, therefore this Bill has not really the concurrence of the majority of the Committee. If it was so, I might add my name to the number of dissentients. I was in the minority on several occasions, but I should be very sorry that the fact should be held to bind me to the opinion that this is not a good Bill. Of course, as soon as the question came to the test of the voting, it was apparent that only two members of the whole Council wished to postpone the Bill, and the same two wished that it should not pass. All the rest were anxious that it should pass. Just as if all the gentlemen sitting here to-day had to prepare a *menu* for their dinner there would be no two exactly alike, but it would be very unreasonable to say that they did not vote for having dinner at all. Or to take another illustration: if a train is going as far as Allahabad some passengers might wish it were going further, others might wish it stopped a longer or shorter time at particular places, but yet all are very well content to go by it. In this case only two members wished that the train should not start at all. Such differences of opinion as these were the essential outcome

of the Bill being exceedingly complicated, the Committee being exceedingly numerous, and having not only two extreme parties both strongly represented in it, but also of a very varied experience of different parts of the country being brought to bear upon the problems which were being discussed.

"Then we are told the Bill is not in conformity with the general expectation. In one sense it is in conformity with the general expectation; that is to say, I presume the general expectation was that this Council, under the presidency of His Excellency the Viceroy, would occupy a middle position, which it actually has occupied, and would as it were moderate between those who were extremely anxious for the zamíndár's interests and those who were extremely anxious for the victory of the raiyat's interests. In that sense I claim that the Bill is in conformity with the general expectation. In another sense certainly it is not, because it is the resultant of two contrary forces which have brought about a Bill which goes in the direction of neither, but in the medium direction between the two.

"Then we have been told that we have deserted the original scope of the Bill and what we laid down in our letter to the Secretary of State as the objects and intentions of the Bill. I think, if this statement is examined, it will not be found to be based on any accurate foundation. We have in the course of the discussion examined most of the points one by one in reference to which the assertion was made, and I think I may say that we have fairly maintained our position. It is perfectly true that a good many points which we laid down in our letter to the Secretary of State, and on which we intended to legislate, we have cut adrift; but it was because we found the ship was over-weighted, or that they were points in themselves which could not be carried out. We have got rid of the right of transfer, and I do not presume that the hon'ble gentleman who charges us with having deserted our original position would make that a ground of objection. I maintain, however, that in regard to contract and all the other points of importance we have practically carried out what we proposed to the Secretary of State. The real fact is that, after the very careful enquiry which was given when the question of revising the rent law was under discussion, it became impossible that any legislation should take a direction very materially different from what it has taken. I feel therefore that, however we might disagree, nobody who reads these papers can think that we are going back from the principles laid down by the Rent Commission. Their report is an elaborated one, and I do not think that we have departed far from the foundations which they laid, and on which the legislature was practically bound to build.

"There are one or two other points on which I should like to make some remarks. One is the great danger which has been so much enforced on our attention of the spread of litigation. I have no doubt whatever that the Bill will cause litigation; it would be worse than foolishness to argue that it will not. Act X of 1859 caused a great deal of litigation; in fact, wherever you give or define rights, you must cause litigation. So long as the raiyat is absolutely submissive to the zamíndár, and so long as he has no rights to enforce, and no Courts to enforce them in, so long will there be no litigation; but when you find customary rights being questioned, being in the excitement of agitation supported on one side and weakened in the other; when you find what my hon'ble friend opposite (Mr. Evans) called the moral rights of the raiyat existing in an abstract form, but impossible to prove in a concrete form, then if you attempt to define those rights and give the raiyat an opportunity of proving them, doubtless you must have litigation. The alternative of no litigation is to leave the raiyat entirely at the mercy of the opposite party—the party against whom he has his rights to enforce; and that, I think, is a sufficient answer. Nobody wants litigation, but if the alternatives are to give the raiyat rights and enable him to enforce them, or to give him no rights at all, then I have no hesitation in saying we should willingly choose the former alternative. We are told that, as the outcome of this Bill, especially of the Settlement and Record chapter, every non-occupancy-raiyat will try and prove occupancy-rights, every occupancy-raiyat will try and prove a right to hold at fixed rates. But why is this? Simply because at the present moment neither raiyat nor landlord knows what rights he has. There is no record that the Courts will accept, and all is left to hard swearing. The Benares Division is like the Bíhár Division permanently settled. Its population is the same, the tenures are the same, and the rights ought to be the same. If they are not, it is because in the one province they are properly recorded; in the other they are not. Therefore I say that though the immediate result of this Bill will be a considerable increase of litigation, yet the result of it, and especially I refer to the Settlement chapter, which will, as His Excellency has told you, be applied only experimentally to a single district in Bíhár, should undoubtedly be to give a definiteness and stability to rights that are now indefinite and unstable, and thus tend ultimately to a very great decrease in litigation.

"I would now refer to the Hon'ble Mr. Hunter's point about the pressure of the population on the soil, and the necessity for bringing tracts at present lying waste under cultivation. Looking at the question as he does from a philosophical point of view, from a deeper point of view than the particular provisions of this Bill, he says when you define a raiyat's rights and how he is to enforce them, you have only done half your work. He says the question is a question between the productiveness of the soil and the pressure of the population on that soil, and in that view he has successfully urged in connection with this Bill a provision by which landlords should be encouraged to break up the soil and give more room for the increased production of food; but going outside the Bill he also suggested a further measure—that of enquiring into the possibility of a large system of internal emigration. Now there is no doubt whatever that in various parts of Bengal and Assam there are enormous areas of waste land available, while on the other hand there is no doubt that in various parts of Bíhár and

of Bengal there is very great pressure of population on the soil; and if we can transfer the surplus population to these waste lands we shall do more to stave off famine than almost any other measure we can adopt. Now I find that at the present moment there are nine millions of acres in Assam of culturable soil available to anybody who chooses to ask for it, while in Bihár there is a pressure of 800 souls per square mile; and from that province some 30,000 persons migrate (not emigrate) annually into Eastern Bengal; they cut the crops and come back to their homes. People naturally ask why these men undertake a long journey of about 200 miles and yet do not settle there. The fact remains that they do not settle down, and we have to deal with facts as we find them. Well the most obvious resource which occurs to every one is a system of State emigration. But I find that wherever attempts have been made by the State as a State to induce emigration, they have not resulted in a brilliant success. They have been attempted in Burma, in the Central Provinces and in the Dooars, but I may be permitted to say that State emigration, so called, has been a failure. I was glad therefore to find that my hon'ble friend did not confine himself to a system of State emigration, that is to say, to emigration assisted by advances from the State, which means not only State assistance and support, but also State supervision, State collections and State prosecutions. The fact is the people who are most ready to take advances are the people who are least able to help themselves, least likely to work, least likely to repay them. The planter never looks to have his advances directly repaid. The Government must look to it, and yet cannot without discredit resort to the only measures which would effectually enforce it. As State emigration has not succeeded in the past, neither, I am persuaded, will it succeed in the future. But the Hon'ble Mr. Hunter has urged that private enterprise assisted by Government can do what the State working directly cannot do; and I can only say that, while the work is one which I think Government cannot do for itself, I quite agree with him that the State may well encourage private enterprise in this direction and be prepared to give assistance, and the Government will, I am sure, be glad to consider favourably any well-digested project of this kind coming before them the initiative in which is taken by private enterprise.

"I have only one word more to say. We have been warned in somewhat solemn terms of the very serious nature of the measure which we are now passing. We have been told what a heavy responsibility rests upon us. I am sure I may say, not only for myself, but for my colleagues who have been associated with me in the labours of the Select Committee, that while we have been working upon it for two years, giving to it our best time, thoughts and energies, we certainly felt the sense of responsibility in what we were doing to be very great. From the very beginning it has been by no means a light task, and it has been by no means with a light heart that we have undertaken it. We have had the energies of the two conflicting interests brought to bear upon us as a heavy burthen in some cases,—I will not say unduly brought to bear,—but we have had to support a good deal of painful criticism, both from old friends and outsiders. However, as was said by my hon'ble friend Mr. Reynolds, I think we may justly claim that what we have done is really an earnest and sincere attempt to carry out under a full sense of the responsibility the duty which the Council imposed upon the Committee two years ago. I do not venture to say that I believe in any Utopia which will be brought about by the operation of this Bill. It takes a very long time for the leaven of land legislation in India to leaven the whole lump of agricultural customs, modes of thought and ways of procedure. Moreover, as I have said already, I believe in the first instance it will lead to considerable litigation. But I do believe that when this agitation has gone down it will be found that we have really gone far to solve a most difficult problem in the way which is most just to the interests of the zamíndárs and the raiyats alike, and in a way which will certainly conduce to the stability of the country and in the future to the great lessening of litigation."

His Excellency THE PRESIDENT said:—"It is perhaps as well that I should say a few words before putting the motion. Sir Steuart Bayley, in his admirable speech, has explained so fully the views of the Government of India, and has anticipated so many of the points upon which I had felt inclined to touch, that there is but little for me to add. At the same time it is but fair to my colleagues that I should take this opportunity of saying how glad I have been to associate myself with them in the passing of this measure. It is true I have only come in time to take part in its recent stages, but I should be very unwilling on that account to withdraw in any degree from the full responsibility which rightly attaches to the head of the Government of India for any Act passed by this Legislative Council. Moreover, it must be remembered that before reaching Calcutta I was perfectly familiar with almost all the issues raised in this Bill. Similar discussions took place in reference to Act X of 1859 when I was Under-Secretary of State for India; and other circumstances have for some years past called my special attention to questions connected with land legislation. It was urged at that time that Act X of 1859 was an infringement of the Permanent Settlement; but I was convinced then, as I am convinced now, and as the British and Indian Governments of that day and of this were and are convinced, that the 'permanency' of Lord Cornwallis' settlement applied to the pledge given by His Excellency never to demand from the zamíndárs an increase of the assessment which at that date was imposed upon them; but that, so far from any quality of permanency having been then officially impressed upon the relations subsisting between the zamíndárs and their raiyats, the Indian Administration of the day and the East India Company reserved to themselves in the most explicit and express manner the right of interfering in the interests and for the protection of the raiyats whenever circumstances might require them to do so. But I have no hesitation in adding that, even if no such reservation had been made by Lord Cornwallis and his colleagues, there would have remained an inherent and indefeasible right in the Government of India to enter upon legislation such as that we have un-

dertaken as a matter of public policy, and in the interests of the community at large. I do not presume, however, to say that, in spite of my conscientious endeavours to master all the intricacies of the Bill, I have felt myself in a position to pass an authoritative opinion upon all the subordinate points which are involved in it. A great number of those points are of a technical character, and can only be properly decided by those who have a practical acquaintance with the agricultural conditions of the country. Again, there are some parts of the Bill to which I have assented with a fuller and more satisfactory conviction than to others, while there are some with regard to which I have subordinated my indefinite impressions to the opinions and authority of those who were more competent than myself to come to a decision upon them. It was impossible that this should have been otherwise; but, taking the measure as a whole, I have no hesitation in saying, both with respect to its principles, its general features and its chief details, that the Bill as it stands has my hearty and sincere support. I believe with Mr. Reynolds that it is a translation and re-production in the language of the day of the spirit and essence of Lord Cornwallis' Settlement, that it is in harmony with his intentions, that it carries out his ideas, that it is calculated to ensure the results he aimed at, and that it is conceived in the same beneficent and generous spirit which actuated the original framers of the Regulations of 1793. Lord Cornwallis desired to relieve the zamíndárs from the worry and ruin occasioned by the capricious and frequent enhancements exacted from them by former Governments; and it is evident from his language that he expected they would show the same consideration to their raiyats. I am happy to think that all of us assembled here to-day, no matter what our individual opinions upon various points of this measure may be, are actuated by the same honest and conscientious desire to do justice to each of the interests concerned, and to regulate their relations in such a manner as to secure the rights of the one and to respect those of the other. Nor is there one of us who would not have been ready to have submitted to any amount of additional labour or inconvenience, had there been any hope that by further discussion we could have arrived at a more satisfactory conclusion than that which we have reached.

"These few observations are all that it is necessary for me to say on the Bill generally; but there is one accusation which has been brought against the Government of India, and against its responsible head, so extraordinary and unfounded that it is right I should vindicate both myself and my colleagues in the matter. In consequence of a telegram which has been sent to England for the purpose of being used in Parliament, a statement is about to be made that the Viceroy of India has rushed this Bill with indecent haste through the Legislative Council, in order that he might hurry off to Simla. That statement ought never to have been made. So far from any haste or desire for haste having attended the passing of this measure, I would venture to remind the Council that independent of the long consideration it has received since it was introduced in 1882—I may say ever since the letter of the Government of India was written in March, 1881—the most ample opportunity has been given to those interested on either side of stating their objections, and of bringing to the notice of the legislature any alterations they might have to suggest. After lengthy debates in Council upon its first introduction, it was referred to a Select Committee. There were 64 meetings of that Select Committee, each meeting lasting nearly four hours—periods which if added together would amount to 19 or 20 days of 12 hours each. At these discussions the representatives of the zamíndárs had the most ample opportunities given them of pressing their views upon their colleagues; and so far from their representations having failed to produce any effect, so far from the observation of an hon'ble member being true that amendments proceeding from the zamíndárs' representatives always failed to meet with due consideration at the hands of the Committee, even since I myself have been in the country,—that is to say, within the last two or three months,—amendments of the most important kind, amendments which the zamíndárs represented as being vital to their interests, have beeen incorporated with the Bill. Amongst these amendments, I may mention the elimination of the word 'estate', which give to the clause in which it was found an operation so wide as to be very disadvantageous to the interests of the zamíndárs. The right of transfer which was found in the original Bill was also removed at the instance of the zamíndár party. It was agreed for the same reason that no limit should be placed upon the initial rent to be demanded from the non-occupancy-raiyat, that is to say, that there should be no interference with freedom of contract in respect of rent between the zamíndár and his ordinary tenant; for it will be observed that the Bill has been careful to discriminate between the ancient, customary and acknowledged rights of occupancy and its attendant incidents universally acknowledged to be inherent in the resident raiyat, and the unprivileged status of the non-occupancy-raiyat. Again, it was proposed in the original draft of the Bill to introduce a universal limit to rent, represented by one-fifth of the value of the gross produce. That limitation has been abolished. In the original Bill, fractional limitations were imposed upon enhancements in Court. These fractional limitations have disappeared. There was also a clause which nullified all contracts which had been entered into between the zamíndárs and their raiyats during the last twenty years. That clause was recognised as unjust, and has been excised. There was another chapter, giving to the non-occupancy-tenant compensation for disturbance on eviction. It was pleaded by the representatives of the zamíndárs that the introduction of a novel principle of the kind would work a great deal of injustice; and it was therefore dropped. In the chapter relating to agreements for enhancements out of Court, the representations of the zamíndárs have been taken into account, as far as circumstances permitted, and a subsidiary clause has been introduced with the object of redressing the hardships entailed by the hard-and-fast application of the 12 per cent. rule. Liberal reclamation clauses were also introduced

in the interests of the zamíndárs; and no later than this morning a most important amendment, moved by the Hon'ble Mr. Hunter, was unanimously accepted by the Council in their anxiety to encourage the zamíndárs to improve their properties, and to relieve them of all unnecessary restrictions in dealing with any tracts of land they might themselves bring under cultivation. I do not say that in agreeing to these modifications we were actuated by any other motive than a desire to do equal justice between the two parties. We did not adopt these alterations in order to conciliate the zamíndárs, or by way of offering a compromise. That would not have been consistent with our duty to the raiyats; nor is it within the province of the Government of India to enter into compromises. The Government of India distributes justice, and that is what we have endeavoured to do in this Bill. We agreed to these concessions because we thought the demand for them was just; but I have mentioned the circumstance in order to rebut the assertion that the amendments introduced in the interests of the zamíndárs and by their representatives have been uniformly rejected or disparaged. I fear that the enumeration I have made of these modifications, which have told so largely in favour of the zamíndárs, will have renewed the pang felt by those of my hon'ble colleagues who were opposed to their being made, and who, so far from admitting that the zamíndárs have been hardly dealt with, contend, on the contrary, that this Bill still falls short of giving adequate protection to the raiyat. At all events, if there is one thing more obvious than another, it is this: that the Government of India has had to exercise a very severe watch over its conscience, in order to discriminate with justice and impartiality between the elaborate arguments advanced on either hand by the eloquent representatives of the zamíndár and raiyat seated at this Council Board. We have been told that we have undertaken a great responsibility in promoting a measure of this description. I should be the last person to deny the truth of the assertion. The measure is a momentous one, affecting vast interests, and calculated to produce far-reaching consequences; but I maintain that a far graver responsibility would have weighed upon those who, if their opposition had succeeded, would have stood between the occupancy-raiyat and those rights which every one acknowledges to be his, and which, every one is equally aware, but for this legislation he would have been in the greatest danger of losing."

The motion was put and agreed to.

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SCHEDULE I.—REPEAL OF ENACTMENTS.
SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.
SCHEDULE III.—LIMITATION.

*A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.*

[As passed in Council.]

Whereas it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows :—

## CHAPTER I.

### Preliminary.

Short title.

1. (*1*) This Act may be called the Bengal Tenancy Act, 1885.

Commencement.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

Local extent.

(*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, XIV of 1874. 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

Repeal.

2. (*1*) The enactments specified in Schedule 1 hereto annexed are repealed in the territories to which this Act extends by its own operation.

(*2*) When this Act is extended to the Division of Orissa or any part thereof, such of these enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context :—

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás mahál and revenue-free lands not entered in any register.

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(*3*) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(*5*) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(*8*) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(*9*) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(*10*) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*11*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

(*12*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

(*13*) "Succession" includes both intestate and testamentary succession.

(*14*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(*15*) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(*16*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(*17*) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(*18*) "Registered" means registered under any Act for the time being in force for the registration of documents.

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## CHAPTER II.

### Classes of Tenants.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, (namely) :—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Meaning of "tenure-holder" and "raiyat."

5. (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(*2*) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

*Explanation.*—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(*3*) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(*4*) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(*5*) Where the area held by a tenant exceeds one hundred standard bíghás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

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## CHAPTER III.

### Tenure-holders.

*Enhancement of rent.*

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

*Enhancement of rent.*

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of enhancement of rent of tenures.

7. (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(*2*) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

*Enhancement of rent.*

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rent aforesaid.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has beenreached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

*Other incidents of tenures.*

*Other incidents of tenures.*

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed.

XIV of 1882.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Bar to recovery of rent pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure. *Other incidents of tenures.*

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## CHAPTER IV.

### RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

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## CHAPTER V.

### OCCUPANCY-RAIYATS.

*General.*

*General.*

Continuance of existing occupancy-rights.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Definition of "settled raiyat."

20. (*1*) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(*2*) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(*4*) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(*5*) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(*6*) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(*7*) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Settled raiyats to have occupancy-rights.

21. (*1*) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(*2*) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of acquisition of occupancy-right by landlord.

22. (*1*) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(*2*) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(*3*) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

*General*

*Explanation.*—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure holder, or by subsequently holding the land in ijárá or farm.

*Incidents of occupancy-right.*

*Incidents of occupancy-right.*

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupany, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

*Enhancement of rent.*

*Enhancement of rent.*

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

*Explanation.*—"Fluvial action" includes change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

*Enhancement of rent.*

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code; XIV of 1882.

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

Rules as to enhancement on ground of landlord's improvement.

33. (*1*) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(*2*) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement-suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhan-

*Enhancement of rent.*

cing the rent on either of the grounds aforesaid, or on any ground corresponding thereto or dismissing the suit on the merits.

XIV of 1882.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

*Reduction of rent.*

*Reduction of rent*

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

*Price-lists.*

*Price lists.*

Price-lists of staple food-crops.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

*Commutation.*

*Commutation.*

Commutation of rent payable in kind.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons or the refusal.

## CHAPTER VI.

### NON-OCCUPANCY-RAIYATS.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds on which non-occupancy-raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(*2*) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a raiyat under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the raiyat does not execute the agreement and file it under sub-section (*3*), he shall be deemed for the purposes of this section to have refused to execute it.

(*6*) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(*8*) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

## CHAPTER VII.

### UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely):—

(a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(b) in any other case twenty-five per cent.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(a) on the expiration of the term of a written lease;

(b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

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## CHAPTER VIII.

### GENERAL PROVISIONS AS TO RENT.

*Rules and presumptions as to amount of rent.*

*Rules and presumptions as to amount of rent*

Rules and presumptions as to fixity of rent.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

*Alteration of rent on alteration of area.*

*Alteration of rent on alteration of area.*

Alteration of rent in respect of alteration in area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

*Alteration of rent on alteration of area.*

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

*Payment of rent.*

*Payment of rent.*

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and place for payment of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

*Receipts and accounts.*

*Receipts and accounts.*

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the

*Receipts and accounts.*

tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Local Government to prepare forms of receipt and account.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

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Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

*Deposit of rent.*

*Deposit of rent.*

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

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shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

*Deposit of rent.*

Payment or refund of deposit.

64. (*1*) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(*4*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

## *Arrears of rent.*

*Arrears of rent.*

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment for arrears in other cases.

66. (*1*) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Faslí or Amlí year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(*2*) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(*3*) The Court may for special reasons extend the period of fifteen days mentioned in this section.

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(*2*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

## *Produce-rents.*

*Produce-rents.*

Order for appraising or dividing produce.

69. (*1*) Where rent is taken by appraisement or division of the produce,—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(*2*) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(*3*) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

Procedure where officer appointed.

70. (*1*) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and

*Produce-rents.*

the procedure to be follwed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

*Liability for rent on change of landlord or after transfer of tenure or holding.*

*Liability for rent on change of landlord or after transfer of tenure or holding.*

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent after transfer of occupancy-holding.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

*Illegal Cesses, &c.*

*Illegal cesses, &c.*

Abwab, &c., illegal.

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

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## CHAPTER IX.

### Miscellaneous Provisions as to Landlords and Tenants.

*Improvements.*

*Improvements.*

Definition of "improvement."

76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:— *Improvements.*

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or re-construction of any of the foregoing works or alterations therein, or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, togeher with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

*Right to make improvements in case of holding at fixed rates and occupancy-holding.*

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

*Collector to decide question as to right to make improvement, &c.*

78. If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

*Right to make improvements in case of non-occupancy-holding.*

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's premission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

*Registration of landlords' improvements.*

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

*Application to record evidence as to improvement.*

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

*Compensation for raiyats' improvements.*

82. (1) Every raiyat who is ejected from is holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improve-

*Improvements.*

ments, shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(*3*) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(*5*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamatiom or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(*2*) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

*Acquisition of land for building and other purposes.*

*Acquisition of land for building and other purposes.*

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

*Sub-letting.*

*Sub-letting.*

Restrictions on sub-letting.

85. (*1*) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(*2*) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(*3*) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

*Surrender and abandonment.*

*Surrender and abandonment.*

Surrender.

86. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(*2*) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) When a raiyat has surrndered his holding, the Court shall in the following cases for the purposes of sub-section (*2*) presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(*4*) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself. *Surrender and abandonment.*

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

### *Sub-division of tenancy.*

Division of tenancy not binding on landlord without his consent.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing. *Sub-division of tenancy.*

### *Ejectment.*

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree. *Ejectment.*

### *Measurements.*

Landlord's right to measure land.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue. *Measurements.*

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely) :—

(a) where the area of the tenure or holding is liable, by reason of alluvion, or diluvion to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Power for Court to order tenant to attend and point out boundaries.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a ladulord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

*Measurements.*

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

*Managers.*

*Managers.*

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager.

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

VII (B C.) of 1876.

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may unles it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

Power to nominate person to act in all cases under clause (*b*) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

IX (B. C) of 1879.

97. In any case in which the Court of Wards undertakes under section 95, the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

Provisions applicable to manager.

98. (*1*) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 103.

(*8*) He shall be removable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to make rules.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

## CHAPTER X.

### RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

*Mandyers.*

Power to order survey and preparation of record-of-rights.

101. (*1*) The Local Government may in any case, with the previous sanction of the of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following (namely) :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords genrally;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(*a*) the name of each tenant :—

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Procedure as to recording or settling rents.

104. (*1*) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(*2*) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (*2*), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(*3*) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

Publication of record.

105. (*1*) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(*2*) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

Procedure to be adopted by Revenue-officer.

XIV of 1882

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

Appeals from decisions of Revenue-officers.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 1882.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

XIV of 1882.

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

Undisputed entries in record to be presumptive evidence.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Time at which settlement of rent is to take effect.

111. When an order has been made under section 101,—

Stay of proceedings in Civil Court during preparation of record.

(a) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

112. (1) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

Power to authorize a special settlement in special cases.

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding, for fifteen years, and, in the case of a non-occupancy holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Period for which rents as settled are to remain unaltered.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Expenses of proceedings under chapter.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

## CHAPTER XI.

### Record of Proprietors' Private Lands.

Saving as to khámár land.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bihár as zirát, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf, by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát sír, nij, nij-jot or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

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## CHAPTER XII.

### Distraint.

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or — VII (B. C.) of 1876.

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Form of application.

122. (*1*) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(c) the period in respect of which the arrear is claimed;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(e) the nature and approximate value of the produce to be distrained;

(f) the place where it is to be found, or such other particulars as may suffice for its identification; and

(g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

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Procedure on receipt of application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot fortwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

Service of demand and account.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c., produce.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

Place of sale.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

When produce may be sold standing.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Procedure where demand is paid before the sale.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distraint property, the defaulter, or the owner of the distraint property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foreging section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlords.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued,

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter, to the Civil Court, it may, from time to time, by order authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Power for Local Government to authorize distraint in certain cases.

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

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## CHAPTER XIII.

### Judicial Procedure.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

XIV of 1882.

Jurisdiction in proceedings under Act.

(3) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Náibs or gumáshtas to be recognized agents.

XIV of 1882.

XIV of 1882.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Special register of suits.

XIV of 1882.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits.

148. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent-suits.

(a) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to

XIV of 1882.

give the extent or boundaries, in lieu thereof a description sufficient for identification:

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866; XIV of 1866

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served:

(e) a written statement shall not be filed without the leave of the Court:

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not: XIV of 1882.

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears:

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. XIV of 1882.

Payment into Court of money admitted to be due to third person.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff, and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Appeals in rent-suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

(a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely) :—

(a) the situation, quantity and boundaries of the land;

(b) the name and description of the tenant thereof (if any);

(c) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

XIV of 1882.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

## CHAPTER XIV.

### SALE FOR ARREARS UNDER DECREE.

General powers of purchaser as to avoidance of incumbrances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances".

Provided as follows :—

(a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(b) the power to annull shall be exercisable only in manner by this chapter directed.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter :—

(a) any under-tenure existing from the time of the Permanent Settlement;

(b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(d) any right of occupancy;

(e) the right of non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer.

(f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(b) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to a sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the parganá, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree. XIV of 1882.

Order of attachment and proclamation of sale to be issued simultaneously

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code. XIV of 1882.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

Procedure for annuling incumbrances under the foregoing sections.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

Rules for disposal of the sale-proceeds.

XIV of 1882.

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have been fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. XIV of 1882.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the upon the sale, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding. XIV of 1882

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Application by judgment-debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside: XIV of 1882.

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section. XIV of 1882

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter. XIV of 1882.

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act. III of 1877.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

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## CHAPTER XV.

### CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (*1*) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(*2*) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(*3*) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

Permanent mukarrarí leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

Utbandi, chur and dearah lands.

180. (*1*) Notwithstanding anything in this Act a raiyat—

(*a*) who in any part of the country where the custom of ùtbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of ùtbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

until he has held the land in question for twelve continous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) Chapter VI shall not apply to raiyats holding land under the custom of ùtbandi in respect of land held by them under that custom.

(*3*) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

181. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Homesteads.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necesary implication modified or abolished by, its provisions.

Saving of custom.

*Illustrations.*

(1). A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2). The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exist, will not be affected by this Act.

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## CHAPTER XVI.

### LIMITATION.

184. (*1*) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and applicatoin made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule III.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. (*1*) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section. XV of 1877.

Portions of the Indian Limitation Act not applicable to such suits, &c.

(*2*) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section. XV of 1877.

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## CHAPTER XVII.

### SUPPLEMENTAL.

*Penalties.*

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force, — *Penalties.*

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. XLV of 1860

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code. XLV of 1860.

*Agents and representatives of landlords.*

187. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord. *Agents and representatives of landlords.*

Power for landlord to act through agent.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

*Agents and representatives of landlords.*

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

Joint-landlords to act collectively or by common agent.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

*Rules under Act.*

*Rules under Act.*

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

V (B.C.) of 1875.

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

*Provisions as to temporarily-settled districts.*

*Provisions as to temporarily-settled districts.*

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, nothwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

*Rights of pasturage, &c.*

*Rights of pasturage, &c.*

Right of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

*Saving for conditions binding on landlords.*

*Saving for conditions binding on landlords.*

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

*Savings for special enactments.*

Savings for special enactments.

195. Nothing in this Act shall affect— *Savings for special enactments.*

(*a*) the powers and duties of settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) any enactment relating to patní tenures, in so far as it relates to those tenures; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

*Construction of Act.*

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council. *Construction of Act.*

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## SCHEDULE I.

(*See Section 2.*)

REPEAL OF ENACTMENTS.

*Regulations of the Bengal Code.*

| Number and year | Subject of Regulation. | Extent of repeal. |
|---|---|---|
| VIII of 1793 . . | A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs and other actual proprietors of land in Bengal, Bihár and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates. | Sections 51, 52, 53, 54, 55, 64 and 65. |
| XII of 1805 . . | A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur. | Section 7. |
| V of 1812 . . . | A Regulation for amending some of the rules at present in force for the collection of the Land-revenue. | Sections 2, 3, 4, 26 and 27 |
| XVIII of 1812 . . | A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof. | The preamble and sections 2 and 3. |
| XI of 1825 . . . | A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea. | In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause. |

*Acts of the Bengal Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| VI of 1862 . . . | An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal). | The whole Act. |

*Acts of the Bengal Council*—continued.

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| IV of 1867 . . . | An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments. | The whole Act. |
| VIII of 1869 . . | An Act to amend the Procedure in suits between Landlords and Tenants. | The whole Act. |
| VIII of 1879 . . | An Act to define and limit the powers of Settlement-officers. | The whole Act. |

*Act of the Governor General in Council.*

| Number and year. | Subject of Act. | Extent of repeal. |
|---|---|---|
| X of 1859 . . . | An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal. | The whole Act. |

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

*(See sections 56 and 57.)*

# FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial No. of Receipt

2. Estate ; Village ; Tháná

3. Tenant's name , son of

4. Particulars of the holding—

*Nukdi*, Bíghás ; rent Rs.

*Baouli*, Bíghás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs.
Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent.

# FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION)

1. Serial number of Receipt

2. Estate ; Village ; Tháná

3. Tenant's name , son of

4. Particulars of the holding—

*Nukdi*, Bíghás ; rent Rs.

*Baouli*, Bíghás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs.
Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

## DETAILS OF PAYMENTS (TENANT'S PORTION).

| Date of payment, and name of person through whom paid. | Nukdi. | | Baouli. | | Julkur, &c | | Cesses. | | Signature of the landlord or his authorized agent. |
|---|---|---|---|---|---|---|---|---|---|
| | Current on account of kist . | Arrear on account of year , kist . | Current on account of crop . | Arrear on account of year , crop . | Current on account of kist . | Arrear on account of year , kist . | Current on account of kist . | Arrear on account of year , kist . | |
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## DETAILS OF PAYMENTS (LANDLORD'S PORTION).

| Date of payment, and name of person through whom paid. | Nukdi. | | Baouli. | | Julkur, &c. | | Cesses. | |
|---|---|---|---|---|---|---|---|---|
| | Current on account of kist . | Arrear on account of year , kist . | Current on account of crop . | Arrear on account of year , crop . | Current on account of kist . | Arrear on account of year , kist . | Current on account of kist . | Arrear on account of year , kist . |
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# FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

| | Bíghás | Rate | Rs. A. P. |
|---|---|---|---|
| *Nukdi.* | | | |
| Government Cesses | | | |

| | Bíghás | Maunds | Rs. A. P. |
|---|---|---|---|
| *Baouli.* | | | |
| Julkur . . . . . | | | |
| Bunkur . . . . . | | | |
| Phulkur . . . . . | | | |

| | Maunds | Rs. A. P. |
|---|---|---|
| 4. Demand of the year . . . . . | | |
| 5. Balance of former years (Bakaya) . . . . | | |
| | | Rs. A. P. |
| 6. Total demand (current and arrear) . . . . | | |
| 7. Paid each on account of { Current demand . . . | | |
| { Arrear demand . . . | | |
| | Maunds | |
| 8. Paid in kind . . . . . | | |
| | | Rs. A. P. |
| 9. Balance outstanding at end of year . . . . | | |

10. Signature of the Landlord or his authorized agent

# FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

| | Bíghás | Rate | Rs. A. P. |
|---|---|---|---|
| *Nukdi.* | | | |
| Government Cesses | | | |

| | Bíghás | Maunds | Rs. A. P. |
|---|---|---|---|
| *Baouli.* | | | |
| Julkur . . . . . | | | |
| Bunkur . . . . . | | | |
| Phulkur . . . . . | | | |

| | Maunds | Rs. A. P. |
|---|---|---|
| 4. Demand of the year . . . . . | | |
| 5. Balance of former years (Bakaya) . . . . . | | |
| | | Rs. A. P. |
| 6. Total demand (current and arrear) . . . . | | |
| 7. Paid each on account of { Current demand . . . | | |
| { Arrear demand . . . | | |
| | Maunds | |
| 8. Paid in kind . . . . . | | |
| | | Rs. A. P. |
| 9. Balance outstanding at end of year . . . . | | |

10. Signature of the Landlord or his authorized agent

# SCHEDULE III.

## LIMITATION.

(*See section 184.*)

### PART I.—*Suits.*

| Description of Suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| 1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach. | One year . . | The date of the breach. |
| 2. For the recovery of an arrear of rent— | | |
| (*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding. | Six months . | The date of the service of notice of the deposit. |
| (*b*) in other cases . . . . | Three years . | The last day of the Bengalí year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amlí or Faslí year in which the arrear fell due, where either of those years prevails. |
| 3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat. | Two years . | The date of dispossession. |

### PART II.—*Appeals.*

| Description of Appeal | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 4. From any decree or order under this Act, to the Court of a District Judge or Special Judge. | Thirty days . | The date of the decree or order appealed against. |
| 5. From any order of a Collector under this Act to the Commissioner. | Thirty days . | The date of the order appealed against. |

### PART III.—*Applications.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877. | Three years . | (1) The date of the decree of order; or<br>(2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or<br>(3) where there has been a review of judgment, the date of the decision passed on the review. |

XV of 1877.

No 24, dated 23rd June, 1885

From—Her Majesty's Secretary of State for India,

To—The Government of India.

I have considered in Council the Bengal Tenancy Act, No. VIII of 1885, which received Your Lordship's assent on the 14th March last, and was forwarded with your letter No. 10, Legislative, of 17th idem.

2. In announcing to Your Excellency that this Act will be left to its operation, I must express my cordial sense of the ability and attention with which the important subject of the amendment of the law of landlord and tenant in Bengal has been treated by the Rent Law Commission, by the numerous officers who have been called on for opinions upon it, by the Local Government, by your Council, and especially by the members of the Select Committee.

3. As promised in my Legislative despatches marginally noted, I have given my careful attention to the objections urged by different memorialists to the legislation which has now been completed.

No. 17 of 8th May, 1884, with reference to a memorial from the Central Committee of landholders of Bengal and Bihár.

No. 22 of 19th June, 1884, with reference to a memorial of Mr. J. Stalkartt, on behalf of the raiyats of India.

No. 30 of 28th August, 1884, with reference to a memorial of the landholders of Bihár.

4. Upon the arguments urged against the provisions of the Act from the point of view of the tenant, I would remark that, although the Act may not confer upon the tenants all the advantages to which some may have deemed their class entitled, I entertain no doubt that it will prove in a high degree beneficial to the raiyats generally, especially to the most numerous and important class, the settled raiyats, whose claims are also the strongest. An examination of some of the principal differences between the new law and that which it supersedes makes this evident. The proof of title to occupancy-right is greatly facilitated. It will no longer be possible for the settled raiyat to be induced or compelled to contract himself out of his occupancy-right. The principle of the "judicial rent" is more firmly established. The provisions of the law restricting enhancement of rent to the amount which can be shown to be fair and equitable are made more effective. Protection is given against the too frequent repetition of enhancements and of suits for arrears. By the substitution of the process of sale of the occupancy-right for that of ejectment in execution of decrees for arrears, the value of his occupancy interest, of his improvements and of his standing crops, is secured to the raiyat after his arrears are liquidated. The power of distraint, while it is retained as an instrument for *bonâ fide* recovery of rent, can no longer be used for purposes of harassment or oppression. Illicit demands in excess of the legal rent are more effectually provided against. It is made clear, in case of doubt or dispute, when, how, and to whom the raiyat is to pay his rent. And due receipts for his payments, and statements of his account are secured to the raiyat. The non-occupancy cultivator, while the distinction between him and the settled raiyat is maintained, also receives new and valuable protection. He will ordinarily be able to claim to have a fair rent fixed by the court for a term; he will be protected from ejectment as long as he pays that rent; his right to make improvements is defined; and the enjoyment of their fruit is secured to him.

5. On the part of the zamíndárs it has been contended in some memorials that, prior to the Permanent Settlement (save where their rights were invaded by mere usurpation) they were absolute proprietors of the soil; that the revenue they paid was unvarying in amount until arbitrarily enhanced by the later Muhammadan rulers; and that the raiyats possessed no rights not derived from them. This contention, however, is not supported by the language of the Code of 1793. The preamble of Regulation II states that property in the soil was never, before 1793, declared to be vested in the landholders; that before that date they were not entitled to transfer such rights as they did possess without the sanction of the Government; and that "the public demand on each estate was liable to annual or frequent variation at the discretion of Government." The memorialists appear to me to make the mistake of supposing that the Permanent Settlement Regulations declared an existing, instead of creating a new state of things.

6. So also I understand it to have been asserted that the Code of 1793 acknowledged the zamíndárs to be absolute proprietors of the soil, and therefore admitted no rights of the cultivators as against them, except such as might be expressly declared in the Code itself; that whatever rights the raiyats may have possessed were ascertained and defined in the Code, which reserved to the Government no power to ascertain and settle them at any future time; and that therefore the present legislation, purporting to ascertain and settle such rights, is a breach of the Permanent Settlement. This assertion is, however, in my opinion untenable.

7. Regulation I of 1793 expressly reserved to the Governor General in Council the power, whenever he might deem proper, to enact such regulations as he might think necessary for the protection and welfare of the tenants, the proprietor being expressly debarred from claiming, in case such regulations should be enacted, any reduction of his fixed revenue on that account; a provision which clearly contemplates the possibility of some future regulation affecting his receipts from his tenants.

8. Under this reserved power, legislation for the welfare of the tenant has, on cause shown, been on several occasions adopted, both before and since the enactment of Act X of 1859, of which the present Act is an amendment and an extension. And the exercise of this power was fully justified on the present occasion by the facts brought to light during the inquiries and discussions which preceded the passing of this Act.

9. I observe that many of the objections to particular proposals or provisions which are urged in the memorials I have received are directed against provisions which, though inserted in one or other of the Bills which have been from time to time drafted, find no place in the Act as passed. In the amended Bill first submitted the Select Committee considerably modified the Bill as originally introduced, and modified it in accordance with views urged by the representatives of the zamíndárs. On the points of any importance in which the Act finally passed differs from the first amended Bill, the modifications, with one exception, have been in the same direction. The remaining provisions to which objection was made have been so thoroughly and closely examined by your Legislative Council as to give me confidence that the decision arrived at on each of them is a sound one; while the fact that several of them have been attacked, from opposite points of view, by the representatives of both the landlords' and tenants' interests leads, as has been pointed out, to a fair inference that the just claims of both parties have been allowed.

10. I should have been glad if it had been found possible to give the greater facilities for the realization of rent desired by the zamíndárs by an abbreviation and simplification of procedure in the Civil Courts. But the opinion of the Select Committee, supported by that of the Judges of the High Court, convinces me that this would have involved a serious risk of failure of justice. The executive improvements which have been suggested on this point will doubtless receive your consideration. And it seems probable that the object in view may, to a large extent, be secured by a considerable increase in the number of Munsifs' Courts specially employed in the adjudication of rent suits.

11. As regards the objection that the Act was passed with undue haste, Her Majesty's Government entertain no doubt that the decision of the Legislative Council not to delay the matter further was right. The present measure has, in one shape or another, been before the public for more than four years. No less than five Bills were drafted and submitted to public criticism before that which was finally adopted. An enormous mass of materials has been from time to time collected and considered; and a very strong Select Committee, on which all the interests concerned were represented, was engaged for two sessions in discussing details and framing the Act. A measure so passed cannot be said not to have received full consideration. Moreover, there were the strongest reasons why the controversy upon the reform of the tenancy law, which has agitated and excited the agricultural classes of Bengal for the last seven years, should be set at rest as soon as possible.

12. I request that the different memorialists who have addressed me on the subject of the amendment of the Bengal tenancy law may be informed of the conclusions at which I have arrived.

(Signed) KIMBERLEY.

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